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Natural Resources Committee and Urban Affairs Committee
September 27, 2007

[LR94]

SENATOR LOUDEN: Okay. We're start this hearing today. And of course I want to thank the Papio NRD for having this facility for us today to have this NRD hearing today. We certainly appreciate what they've done for us. The introductions first: on my left is Barb Koehlmoos, clerk for the Natural Resources Committee. Seated next is Senator Gail Kopplin from Gretna. Next to him is Senator Carol Hudkins from Malcolm. To my left is Jody Gittins, legal counsel for the committee. I myself am LeRoy Louden, Chairman of the Natural Resources Committee. To my right is Senator Mike Friend, he's Chairman of the Urban Affairs Committee, we're having a joint committee hearing today. Next to him is Bill Stadtwald, and he's research analyst for the Urban Affairs Committee. Next is Senator Amanda McGill, Vice Chairman of the Urban Affairs Committee. Seated next is Senator Deb Fischer, member of the Natural Resources Committee. And on next is Senator Tom Carlson, from Holdrege, member of the Natural Resources Committee. And on the end is Senator Mark Christensen, from Imperial, also a member of the Natural Resources Committee. With that, some of the other staff people here today are Doug Gibbs, Senator Kopplin's administrative aide; Doug Koebernick, Senator Janssen's office; Jessica Rathbun, Senator White's office and also Senator Lathrop's office. And some people from the state agencies today: from DEQ would be Mike Linder, Jay Ringenberg, and Carla Felix are here with us today. The morning tour...we want to thank the DEQ and the Papio NRD and the city of Omaha for the tour we had this morning of the area to see some of the facilities that have been built and some of the plans that are going in in the future for some of the storm water that's been going on. Some of the people from the Papio NRD here would be: John Winkler, general manager; Marlin Petermann, assistant general manager; and Paul Woodward, I think he's a water engineer or resources engineer. Also if there are any of the Papio NRD directors here, I understand that John Conley, Fred Conley, Rick Kolowski, Jim Thompson, and Jim Schwope are also here with us today, so thank you, gentlemen, again, for the hospitality that we received today. Also from the city of Omaha would be Marty Grate and Nina Cudahy. With that, we will start on part of the hearing. When you

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come up for the hearing, I would ask you to introduce yourself. And then you must turn off your cell phones, or silence your cell phones at the present time. Those wishing to testify on a resolution should come to the front of the room when that resolution is to be heard. As someone finishes testifying the next person should move immediately into the chair at the table. The green sign-in sheets for testifiers on the table need to be completed by all people wishing to testify, including Senators and staff that are introducing resolutions. Please complete the form prior to coming up to testify. When you come up to testify, place the form on the box on the witness table. And print, and it's important to complete the form in its entirety. If our transcribers have questions about your testimony, they use this information to contact you. If you do not wish to testify but would like your name entered into the official record as being present at the hearing, please raise your hand and we will circulate a sheet for you to sign. This list will be a part of the official record of the hearing. As you begin your testimony, state your name and spell it for the record, even if it is an easy name. Please keep your testimony concise and try not to repeat what someone else has covered. If there are large numbers of people that testify it may be necessary to place time limits on testimony. If you have a handout material, give it to the staff and they will circulate it to the committee. If you do not choose to testify you may submit comments in writing and have them read into the official record. No vocal display of support or opposition will be tolerated, and please relax and try not to be nervous. With that we'll take our first testifier, and I think Senator Kopplin will provide the first introduction. [LR94]

SENATOR KOPPLIN: Thank you, members of the committees and welcome, and thank you for bringing your expertise to Legislative District 3. My name is Senator Gail Kopplin, G-a-i-l, K-o-p-p-l-i-n. The purpose of this resolution was to examine the issues regarding the rapid urbanization of the Papillion Creek Watershed. Those of us who have lived in this area for a long time know this as a dangerous creek and have seen what it can do. The issues to be addressed in this study shall include the review of existing governmental collaborations in the watershed that seek to coordinate flood control, water quality, preservation of vulnerable ecosystems, development of wildlife

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habitat, and the costs of such efforts. Specifically the study shall review the use of bonding and other financial mechanisms that would reduce the long-term cost and liability associated with the impact of urban growth on the taxpayers in the affected areas. That is what this study was about. We had a good tour this morning and I think we're ready to hear testimony from anybody who may wish to present it to us. So thank you. [LR94]

SENATOR FRIEND: We'll have to speak louder. Can you hear me? He said this is a study...we'll just have to speak louder. Sorry about that. [LR94]

SENATOR LOUDEN: Any questions for Senator Kopplin? None? Thank you, Senator. First testifier, please. [LR94]

MARK WAYNE: (Exhibit 1) Good afternoon, Senators. My name is Mark Wayne, M-a-r-k W-a-y-n-e. I'm the Sarpy County Administrator. And I'm here representing the Papio Creek Watershed Partnership to give you a brief overview of the partnership, and what we've been about for the last six years since our existence, in regards to helping each of our communities meet the needs under the EPA Clean Water Act and also meeting our permit requirements that are required by NDEQ. You have before you a sheet of paper that has this presentation on it. I'll try to go through it as quickly as I can and then give you an opportunity ask any questions that you have in regards to the partnership. The Papillion Creek Watershed Partnership's mission has been, and always has been, the surface water quality, and storm water quantity issues. We've established goals and standards that are common to all of the members of the partnership in the region for development within the watershed through the year 2040. The partnership itself is made up of 402 square miles, portions of which is in three counties, which you visited today: Washington, Douglas, and Sarpy County. A third of Nebraska's population is in that watershed. Those 11 members, local governments that are wholly or partially part of the Watershed Partnership are all...we have the logos of the 11 cities and jurisdictions that are part of the partnership. You can see Ralston,

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Papillion, Gretna, Bennington, Douglas County, City of Omaha, Girls' and Boys' Town, La Vista, Bellevue, Papillion Creek, Papillion-Missouri River Natural Resource District, Sarpy County, and Douglas County. All have been participants in the partnership from the beginning and have been trying to work together in meeting our goals and requirements under our permits. The need for the watershed partnership came about as a number of our jurisdictions fell under the Clean Water Act, phase two of the Clean Water Act. The city of Omaha had already been involved with that for a number of years prior to us. But in 2001, when it fell upon Sarpy, Douglas County, and a number of our local jurisdictions, we did not have the expertise, both technical and financial resources to meet those needs alone. And so we gathered together and formed the partnership to enter into a local agreement to do the studies that were necessary from an engineering standpoint. And then also develop the policies and procedures that we all needed to follow, wanted to follow, as part of a partnership in that basin. Water quality has always been the important part of that, in trying to improve the water quality. That's certainly what we're mandated to do. And... [LR94]

SENATOR FRIEND: Mark, Mark, I'm sorry to interrupt you. Until they're done with the chairs, they're having trouble hearing in the back. So if we could just...hesitate for a minute... [LR94]

SENATOR LOUDEN Okay, I think you can continue now, Mark. [LR94]

MARK WAYNE: Okay. I'll try to speak into this. As I was saying, water quality has always been the main emphasis of the partnership and both water quality and quantity...we're responsible for both. And water quantity does impact water quality. Problems are getting the worst...time is running out and that is...the land is being developed in our watershed. Past land-use decisions through planning commissions have left us with challenges that we need to meet today and tomorrow. Current water quality and flood control measures will need to be met to meet our future needs. And the partnership's comprehensive policies will help our communities meet vital water

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quality and flood prevention goals. This is clearly involved...as we develop over the next 30 to 40 years and we no longer have sites that we can utilize to perform water quality and water quantity protection. We've developed six policies that are part of our permit that deal with storm water management; peak flow reduction; pollution control; landscape preservation, restoration and conservation; erosion and sediment control, and other best management practices and flood plain management. All of those working together to try to meet our goal and our permit requirements. "What about dams?" is a big question. Is the partnership committed to building 29 dams in the metro area? That's been a big topic in the paper and throughout the months and years that we've been in existence. And the answer is no. Neither the partnership or any of its individual members have approved any plans to build 29 dams. A preliminary concept map of 29 potential detention sites, and I emphasize detention sites, was developed only to estimate the costs that we needed to consider in terms of funding options. Some of those sites are not necessarily even detention facilities, but they're water quality basins for sediment control. All options for water quality and flood prevention are being studied and open discussions with the public and all government jurisdictions are going to take place. The partnership believes that storm water runoff from the watershed must be reduced and not just maintained. There are options that we have and that are being studied on our phase four of our technical engineering study. And low impact development that mimics natural hydrology is one of those options. Low impact development helps improve storm water quality and quantity and low impact development can help reach watershed goals. And for those of you who are not familiar with low impact development I'm sure others will cover that. But it does involve, basically it could be porous concrete that could be utilized to absorb water as it rains and runs off. It could be green roofs, it could be rain barrels, it could be a whole sort of other items that can be incorporated in our policies as developments occur. Watershed options for detention: water detention sites help flood prevention and water quality. Water detentions sites are different sizes and slow water to prevent flooding while improving water quality. You can see there's a difference between water-quality basin and then regional detention, and those are both potential options along with LIDs that

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could be utilized, and will be utilized. Our watershed is running out of viable locations for water detention sites, and that's as development occurs. When we identified those potential locations we as planners have to keep those in mind. So that once those are developed we really don't have a opportunity to go back and use that ground for detention facilities or other types of LIDs that might be utilized. So we need to be good preservers of that ground and make sure that it's not developed on. Over time, water detention sites have proven to save lives and property. The partnership's next step involve reaching out with the stage IV results, which will be coming out in October and early November. The study is looking at five different options to meet our comprehensive regional flood prevention, water quality, and land use policies and goals. Increased development in the watershed requires action to improve water quality and to reduce the threat of flooding. The public will be involved in recommending solutions. You can see in that time line, through each stage of our study, from the year 2001, we've had a number of public hearings, public forums, and allowed public input into our process. And that will continue into stage IV once those results are made public. We'll be meeting and have meetings in each of the three counties. I am personally meeting with all of the elected officials in Washington and Douglas County, and Sarpy County, to go over the partnership goals, to make sure that we're all clear and are working off the same page. And so I'm personally taking a great deal of my time to try to get the word out to the elected officials, but we'll also do that through public meetings and public forums. We're also asking that each jurisdiction put together a list of potential candidates that could sit on an advisory group. That once the results are available that advisory group can work with the partnership to make recommendations on how we can meet our goals through all the options that are available to us in terms of LIDs and detention facilities, and other policy changes that we need to make as administrators to our zoning regulations to help make sure that we meet our permit goals. The urgency is that time is running out in terms of development of land. Our federal requirements also are mandating us to clean our water. And continued urban growth has and will lead...(lawn mowers in background)...got to compete with lawn mowers too...will lead us to larger flood plains, increased flood plain risk, and risk to life and property, forcing

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more residents to purchase flood insurance. This year the flood plain maps have been changed. We...Sarpy County sent out at least 400 letters to individuals that were...are now in the flood plain and will have to potentially get flood plain insurance, and I think all the other jurisdictions in the Papio Creek Basin have done the same thing. So there are a number of individuals now that were in the past not part...didn't require to get flood insurance, but do have to get flood insurance now. Because we have not met our...those requirements in terms of making sure that people stayed out of the flood plain. Those things change once development occurs and more water runoff comes about. We anticipate that all the land in the Papio Watershed will be developed in the next 30 to 50 years, and so we do need to take some action now and try to protect those areas that we can. So that we can have positive results and reduce the amount of flood plain damage that could occur. That kind of gives you a little history of the partnership. I'd be glad to answer any questions if you have any. [LR94]

SENATOR LOUDEN: Okay. Questions for Mr. Wayne? Senator Hudkins. [LR94]

SENATOR HUDKINS: Mr. Wayne, earlier in your testimony you talked about a green roof. Now I'm assuming that isn't compared to a blue-colored roof or a red-colored roof. What's a green roof? [LR94]

MARK WAYNE: Hopefully somebody with more technical expertise can explain that. It's basically...you could...it's a way of filtering water so it doesn't run off your roof quickly. And it basically absorbs into...there's material on your roof that allows for absorption. So that it doesn't just run down the gutter, down your driveway into the street, and into the gutters and into the streams. And so the green part is that there's obviously some growth material on there, whether it's grasses or some other life-form that grows on the roof. Probably more useful for larger, flat-roof type environments, for businesses. It probably also helps with conservation of energy too. [LR94]

SENATOR HUDKINS: Thank you. [LR94]

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SENATOR LOUDEN: Senator Carlson. [LR94]

SENATOR CARLSON: Senator Louden, Mr. Wayne, a couple of questions, one of them you can probably answer pretty quickly. You talked a little about low impact developments that others will speak to it. Is that right, will others go in more depth on that? [LR94]

MARK WAYNE: Yes. [LR94]

SENATOR CARLSON: The other thing was the number of dams. And just looking at that you could conclude that there might anywhere from 0, which is probably unlikely, to 29, which is probably unlikely. So what's the probability, zero to what? [LR94]

MARK WAYNE: Well that's really what we're studying now in the stage IV. And HDR is doing that technical study. We'll have some recommendations, then we'll take those recommendations to the public, to our partnership. Those locations, those 29 locations, as I said, were identified for us as public entities to protect. To make sure that we preserve those areas in case we need those for...whether it's a LID-type development, or a detention facility...also, water-quality basins, which are different. They're even smaller than a detention facility. And so they are not...I wouldn't consider those dam sites such as what we have here. But there are certainly...I believe, if I can recall, there's probably seven that could be similar to Wehrspann here or Walnut Creek or some of the other larger dam sites. [LR94]

SENATOR CARLSON: Thank you. [LR94]

SENATOR LOUDEN: Other questions for Mr. Wright? I have some. You mentioned there was 11 local governments that are involved in this partnership program you have? [LR94]

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MARK WAYNE: Correct. [LR94]

SENATOR LOUDEN: Now is that like: city of Omaha, county government, Douglas County...what about Washington County? Because that's where I seem to be get some letters, from Washington County. Are they part of the partnership plan? [LR94]

MARK WAYNE: They've been asked to be part of the partnership since we began. Originally there were representatives that came. They really never joined the partnership, but have always been asked at any of our public hearings and other times to be a party to the partnership, certainly be able to participate and learn about what we're doing. So we've always left the door open for them. And I would sure think that we will continue in the future. Right now they don't have to fall under the Clean Water Act. So they're not filing annual reports like we are to NDEQ. [LR94]

SENATOR LOUDEN: When you speak of your 29 dams and stuff, was your plan for some of them to be built farther up the creek, I guess? Up into Washington county...or where were your 29 dams going to be built? [LR94]

MARK WAYNE: And I think John Winkler, the NRD director, could address that. The dam sites that were proposed, 1 and 3C, were not part of the partnership. That's a totally different subject that is part of the NRD's dam sites plans and not part of our partnership. They certainly could contribute to the watershed quality in terms of water and storm water. But that hasn't been a focus from our part. [LR94]

SENATOR LOUDEN: Now when you mention, like 29 dams, that's a number that's been thrown out there...when I think of a dam, you know, I think of a couple, 300 acres of water. Are some of these going to be retention dams that have two or three acres of water? I mean, what do you classify as part of these 29 dams, I guess? [LR94]

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MARK WAYNE: I'll go back to this slide here. And again I'm not an engineer, so certainly one of the engineers can go through this. But the water quality basin is a much smaller...and you can see that little heading below that...they allow water to go through the soil slowly and be filtrated. They're much smaller than a dam site or a detention facility. Detention facilities are probably used more for flood control than the water quality basin. I don't know if you had a tour of this facility, I would suggest...there's a water quality basin to the south of Wehrspann Lake, dam site here...that does just that. It slows the water, allows it to be cleaned before it gets into this dam site and this lake. So the detention facilities that we've talked about are regional detention facilities so that each individual subdivision, SID, doesn't have to build their own detention facility...that they can be done regionally, over say a 500 acre area, in terms of drainage. [LR94]

SENATOR LOUDEN: Yeah. We toured that this morning and saw that, I guess it would be south of us. And then as we toured some of the other areas we saw these smaller dams and they were...whether you called them dams or wetlands or whatever you call them. And that's what I'm wondering, in your 29 dams, what you included? Also on some of this low impact development and your water retention sites: is it up to the developers to build some of those? Or is it going to be up to the NRD and your partnership people to take the lead on that? I mean should the developers have a plan as part of their development? [LR94]

MARK WAYNE: We all have to be a party to that, including the SIDs, and I think from a management standpoint from Sarpy County, I anticipate that our zoning regulations will incorporate LID-type requirements on SIDs in the future. So that they are participating, obviously, in cleaning the water as it leaves their development. So there's going to be a combination. What we are asking for through this partnership is that the NRD, because of their expertise and their ability, through the engineering studies and the resources that they bring to bear, help us. By giving them a tool which includes bonding authority so that we can develop if we need to develop a detention facility, a regional one, that they can be a partner to that, since they have jurisdiction in terms of water quality and

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quantity in all three of these counties. But, specifically, SIDs, developers will be a partner to this and certainly will have something to contribute financially. And probably through LIDs, that we'll have to impose upon them through their development as they take out their permits. So they will have to be a contributor. [LR94]

SENATOR LOUDEN: When you mention bonding authority, if you do that then the developers could more or less get a free ride out of that, wouldn't they? [LR94]

MARK WAYNE: No, because they...and, we'll address that later, but they do not. [LR94]

SENATOR LOUDEN: Okay. Senator McGill. [LR94]

SENATOR MCGILL: I was reading over some of the pamphlets based on this that were sent to us in the mail. And it said that many of the ideas had been adopted from your organization by most of the jurisdictions. Usually it like 8 out of 11, or something like that. Who are the ones that aren't coming on board with a lot of those things? Is it the Washington County people, who aren't as involved? [LR94]

MARK WAYNE: Yeah. Washington County is not part of the partnership at this time. They may be at some time in the future. I think Douglas County has adopted a few of those policies; they have not adopted all of the policies. But the other members have. [LR94]

SENATOR LOUDEN: Other questions? Senator Christensen. [LR94]

SENATOR CHRISTENSEN: If bonding was to be set up, now how's this going to be paid for? And let's say if you set up...understand, strategic planning helps a lot, I can go to my district, but it's a little irrelevant. But if you don't have a plan, understand it can cost much more and you'd be in the critical situation that southwest Nebraska is. But how will it be paid for? How will it be shared? And let's say if you developed something

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before a developer comes in, then is there compensation from that direction? How would it all work? [LR94]

MARK WAYNE: All those details haven't been worked out yet. Mainly because they don't have the authority to do that yet. But certainly SIDs would, through their taxes, would support these projects. [LR94]

SENATOR CHRISTENSEN: In the past projects you've had what percentage would they have paid? [LR94]

MARK WAYNE: John...I think that can be answered by someone else, but... [LR94]

SENATOR CHRISTENSEN: Okay. I can wait for the answer, that's fine. Thank you. [LR94]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony. [LR94]

MARK WAYNE: Thank you. [LR94]

SENATOR LOUDEN: Next testifier. [LR94]

MIKE RYAN: (Exhibit 2) Okay, I have...my name is Mike Ryan, M-i-k-e R-y-a-n, and I'm from Omaha. Before I start, if you'd care to look at...you have copies of this, paper copies of this, if you'd care to look at the screen. This shows most of the so-called 29 dams. That red line I drew around there is just a line around the area below the dams. Within that red line, the yellow part is the developed city of Omaha, for the most part. And there's more of Omaha to the right side of that line, but this is the part of Omaha that's within the Papio Watershed. And I call this to your attention mainly for one reason. And that is no matter how many dams are built, that area within that red line, any

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rainfall, any storm water that emanates from that area will not be affected by the dams. Because it's all below the dams. And I really think that's the issue here today. That's why most people came here from the public. There's concern about the dams. There's concern about the bonding authority being given to the NRD. I'm a member of the Douglas County-Washington County Stormwater Committee. And I'd just like to point out to you--and I know a representative from Washington County will be speaking later on--I'd like to point out to you that Douglas County just recently again affirmed its opposition to bonding authority for the NRD. As you probably know, the three counties and most of the cities and towns in the Pappas Watershed are mandated to fulfill the requirements of the Federal Clean Water Act. They do this by utilizing methods outlined in what is called an NPDES permit. As you may know, NPDES stands for National Pollution Discharge Elimination System. I'd like to emphasize the words "clean water" and "pollution elimination." It's not the federal Flood Act and it's not a flood elimination project. The Clean Water Act is concerned primarily with water quality. Whereas flood control, of course, is concerned mainly about water quantity. What do these two concepts have in common? The quality and the quantity problems are both caused by rain or storm water. In an urban area like Omaha both water quality and quantity are affected by increased storm water runoff caused by impervious surfaces in a city or town. Simply put, our roofs, parking lots, streets, and driveways have replaced the prairies that used to exist here. On a prairie, rain falls and is filtered by the soil into the groundwater close to where that rain fell. Today rain hits impervious surfaces and flows through our storm sewer systems directly into our streams and lakes. Now as this rain comes off these impervious surfaces and runs down hill it picks up pollutants from yards, parking lots, and streets; and washes them into our streams and lakes. And the pollutants are not just dirt and poop, as some of the lobbyists alleged in their testimony on the storm water funding bill last year. We all know that the EPA is the lead agency for the Clean Water Act. But not everyone knows that the EPA prescribes a whole toolbox of methods to deal with storm water problems, called best management practices, or BMPs. These BMPs range from educating the public not to dump pollutants like used motor oil or used antifreeze into storm drains, to low impact design

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or LID. Low impact design, or LID, is the use of engineered features, both in new construction and retrofitted into existing developed areas, to control storm water. In fact, LID is what the EPA recommends to stop runoff. Low impact design focuses on taking the rain where it falls, or as close as possible to this point, and gets it moving into the soil where it is filtered before it ends up in the ground water. Rather than just dumping it into a lake or stream. The beauty of low impact design is that it's a means of reducing runoff for water quality. It can also effectively control flooding, i.e. quantity, that may result from the very same runoff. So if low impact design is utilized properly in new developments in rural areas and is retrofitted into existing parts of urban areas, water quality issues, and water quantity, or flooding issues, can both be addressed effectively. Now I've got a few slides here just to show you some low impact design features. I'll run through them kind of quick, and when I'm done if you've got any questions, feel free to ask me about the slides. I think we can back up on the slides if this works properly. The first one here you see a number of different features. You see a parking lot with a space there, it's probably an infiltration cell. Over on the left side, it is designed to drain the runoff from the parking lot into the ground water. In the middle there, with the pictures of the houses, those are rain gardens. Those are infiltration cells, essentially, with plantings on top of them so they're pleasing to the human eye. On the right side is a wetland. A wetland is a best management practice. On the lower-left-hand corner is a form of a pervious hard surface or pervious paving. On the right side you'll see a street with something running alongside the street there, with rocks in it. This is probably a drainage way or a feature that will retain rainwater. Okay. Here's what's happened in our country: in the first slide in the upper-left-hand corner it shows what it was like when this area was prairie. You had roughly 90 percent of the water, either 40 percent through evaporation and 50 percent through infiltration, going either one of those two places. You only had about ten percent runoff. Then as we gradually urbanize you can see the runoff figure starts going up. Twenty percent in the next one. A residential area, a little more urbanization, we've got thirty percent runoff. We've got more impervious surface, 35 to 50 percent. Here you're getting closer to a downtown area in the bottom-right-hand corner: much, much more runoff, less infiltration. Low impact

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development, according to studies...the key thing to point out here is it's cheaper to do low impact development than to do it the old way: the storm sewers in curbs and, you know, all the systems for transporting this water into a stream. And if you have a storm water financing system set up, people can get credits for using low impact development and won't have to pay as much into that system. A green roof, somebody asked about a green roof. This is a 13 acre green roof on the Ford plant in Dearborn, Michigan. It must work, for Ford to invest this kind of money. A closer look at it: there's the plantings. This is a green roof on top of the Chicago City Hall. Sixty percent of the rainfall that falls on that roof through the course of a year stays on that roof. A closer look at that same green roof. Here's another one that might be on top of a condominium building that can be used for, you know, picnics, or just kind of a quiet area. Here's a simple schematic of a green roof. You can see the plants, the mulch. It's all designed to keep that rainwater there. Don't let it flow down through the drainage system into the stream. Here's a little more complex drawing of a green roof. This is retrofitting into the existing part of the city. What this is designed to do...you'll see down in the bottom picture a curb-cut that leads into, either an infiltration cell or a rain garden. This is designed to take that water that flows down the gutter, get it in there, get it into the ground, get it filtered, and get it down to the ground water. I think, if I remember right, this is from Seattle. Most of these pictures originally came off the EPA web site. This is another retrofit. This is an infiltration cell in a residential area. I would envision on my property, putting something like this down at the end of my driveway. I've already done work on my gutters so that 90 percent of the rainfall that hits my roof goes into my yard, goes onto the soil and drains down into the groundwater, drains down through the soil. I've still got a driveway and I've still got a sidewalk running in front of my house, but if I can get that rainwater into an infiltration cell like this I can probably stop better than 95 percent of the rainwater that hits my property. By the way, just for your information, one inch of rainfall equates to about 650 gallons of water per 100 square feet of impervious surface. Good site design: again here's what a low impact development complex or just a low impact development might look like. Over on the right side: what their street might look like. Instead of the gutters and into the storm sewers your water would drain into...a gully, I

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guess you'd call it, and be held there. A rain garden over on the left side, cuts in a parking lot that appear to be draining into a small wetland or some type of a grassy soil there. That's going to retain the water for a period of time. Another rain garden. Again, the picture of the rain gardens in a residential area. Rain gardens in an apartment complex. Again, these are, you know, infiltration cells underneath, with that gravel and whatnot. Just some more pictures: here's a schematic of a rain garden, another rain garden near a parking lot. You can see some more parking lots, you can see a cut made into the curb in the one in the upper right hand corner. Here's an infiltration cell being built. Here's kind of the first phase of it, the second phase, and here it is finished. It's draining the parking lot from the apartment house and the parking lot also in the foreground there. This isn't the same one but again you're looking at an infiltration cell or rain garden being formed: different types of gravel, geo-textile fabric on the upper part of the cell there. More cuts. Permeable and porous pavements, all different kinds: you can see the use here with some rain gardens along the city street. Okay. This is pervious concrete. Pretty hard to find around this part of the country. They're just starting to use it. But this stuff, I've seen it demonstrated. You can pour water on this stuff and it's just like the concrete wasn't there. It goes right through it. This is down in 27th and F in Lincoln, this picture was taken in June. They're doing some pervious paving right there. You can see what's underneath it over on the left side there: the gravel that's going to allow the water that drains through the pervious pavement to percolate down into the ground water. Here's a closeup view. You can see the aggregate is very uniform sized, and there's voids in there to allow the water to go through. Pervious asphalt. You can see the water coming out of the truck and it doesn't go very far once it hits the street. This is what it looks like under either pervious asphalt or pervious paving. It's an infiltration cell, again. Rain barrels, just a look at different rain barrels. This is the best-looking one I saw. And essentially what happens is it captures some of the rain off your roof and stores it there and you can hook your hose to the bottom and water your law with it. If you have a big rain, even if you put four rain barrels, you're not going to catch everything. But you're going to catch most of the rain from most rain events. Looks at different ones: this is a temporary detention basin,

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maybe, you know, at a Target or a Wal-Mart or some place like that. IT catches the water off the parking lot, holds it, you know, and some of it may eventually drain into the stream. This is at a church, I can't remember exactly where that is. All right. This is a road side retention basin. This is not the same one but it's the same concept and you can see what it might look like without rain. You can see at a drain up at the, you know, the far end of it. This is just a little something I threw in. The University of...Wisconsin, they have this River Alliance of Wisconsin, and they're in the process of removing dams up there. They even have a dam removal guide for citizens. You can send for a whole kit and they'll tell you how to get rid of dams. Most of the research I've read on dams is done by the University of Wisconsin, and from what I'm reading, in the end, dams tend to do more harm than good for water quality. The Denver Urban Drainage And Flood Control District. This is a school with associated soccer and baseball diamonds. You'll see a stream running down here. When it floods this same stream which is running over here--this is a closeup view at one of the soccer fields--the water will come over that embankment, will flood the soccer field. When the flood event is over the water gets set up to drain back into that stream. So it's a temporary flood retention facility that can be used as a sports field or a park. A golf course in that same area used the same way. There's a berm around this course. When it floods that will fill up and kind of become a lake. But there's a stream always there and eventually the water will drain out through the stream. A city park: you can see the two outlets on the stream, you can see up here on this railing all this grass and stuff hanging off. That tells me there was a recent flood event there. What's going to happen is during your flood event you're going to have too much water coming into this park to go through these two tubes. Here's your dam, if you will, up there. This will fill up with water, when the rain event is over, it will slowly drain out of these two tubes. Just an example of some channelizing that's aesthetically done, pleasing to the eye, in the same area. That's about it. I guess the only other comment I have to make is to point out to you that the NRD, this NRD, even though it's a member of the partnership, is not required to have an NPDES permit. That goes to cities and counties. If you have any questions. [LR94]

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SENATOR LOUDEN: Questions for Mr. Ryan, Mike? [LR94]

SENATOR FRIEND: Thank you, Chairman Louden. Mr. Ryan, is it your assertion, just so I'm not cloudy on this at all--and it doesn't even matter to me what your credentials are or anything of that nature--is it your assertion that low impact development is all that needs to be done to fulfill the mandate that springs from the 1972 Clean Water Act or the national, you know, the permit, the national pollutant discharge...I mean, is that enough? [LR94]

MIKE RYAN: Yeah. I think it is. Because it's...you know, this is the solution... [LR94]

SENATOR FRIEND: Okay. Then a follow-up question to that: if that's enough, I've got a constituent in my district and he backs up to the interstate. For four years he's had on and off problems with water running off of that interstate, through his yard. Whose responsibility is it, from a low impact development standpoint, to solve that problem? And it's almost rhetorical. I would present to you the idea that while you're probably right, we got a lot bigger problems that might not be able to be fixed with low impact development. Because the interstate system and the state highway system in this state, I would submit to you, can't be fixed in that manner. I mean, that's my view. [LR94]

MIKE RYAN: I think it can. I think it... [LR94]

SENATOR FRIEND: And at what cost compared to what's happening right now? [LR94]

MIKE RYAN: What's happening right now...well... [LR94]

SENATOR FRIEND: Nothing is happening right now. [LR94]

MIKE RYAN: Nothing is happening right now. You know, your constituent is getting water in his backyard. I think it's, in this case, it's probably the State Department of

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Roads' responsibility to put in some low impact development features to deal with that rainwater rather than having it go through the constituent's back yard. It's my understanding that there is no law that really prevents that, as far as a liability... [LR94]

SENATOR FRIEND: Well, but the federal mandate is we can't have that runoff. I mean, we've got to clean...that water has got to be cleaned up. Now it's going through this guy's yard, and it's going somewhere. I mean, this isn't residing in his yard and sinking into his ground. I mean this is a river going through this guy's yard. And I would venture to guess that other people have created drainage systems out to the sewer system and then it gets pumped into the Papio Creek. So I don't know where I'm going with this, except to say that the state doesn't come to us every year, on the Natural Resources Committee or the Urban Affairs Committee, and say, we need your help, we need extra funds. I mean they've got funding coming out of their ears, but they always need more. They're not coming up and saying, we've got this mandate and we've got to fix it. And that confuses me a little bit. [LR94]

MIKE RYAN: This concept is relatively new, low impact development. To the best of my knowledge it hasn't been implemented to the extent it should be anywhere in this state. We're going to have to start to learn to use it, because this is what is going to work. Dams aren't going to work. [LR94]

SENATOR FRIEND: I would agree, but anyway, thank you. [LR94]

SENATOR LOUDEN: Other questions? Senator Fischer. [LR94]

SENATOR FISCHER: Thank you, Chairman Louden, thank you, Mr. Ryan for being here today. Are you here as a concerned citizen, a property owner... [LR94]

MIKE RYAN: I'm a concerned citizen, I don't have any property that's going to be affected by dams. I've got my little lot and my little house in the middle of Omaha.

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(Laugh) [LR94]

SENATOR FISCHER: Okay. Okay. And you brought up the low impact development. Senator Friend brought up the example of runoff from a road. What about runoff from your house, if you hadn't done anything now? Should the state mandate that every homeowner do something about the roof? Should the state mandate that no matter the cost you're going to have to put that cell at the bottom of your driveway? I don't believe in state mandates. So how are you going to do this? In new developments are you going to have the developer...have a cost to the developer? Or since this seems to be, in my opinion, a basin-wide problem, as we addressed last year in the Legislature, under LB701, dealing with the Republican Basin, if this is a basin-wide problem, should it be the responsibility of every property tax payer in this basin to implement these low impact developments that you think are going to solve this problem? [LR94]

MIKE RYAN: Okay. Most other states, cities, towns, across the country that are mandated to have these NPDES permits have storm water utilities. And there's generally some type of a--and I hate to use the word tax, let's use the word fee, it's more palatable--that's related to the amount of storm water you're contributing to the problem. And I don't like unfunded mandates neither, but it's ultimately a mandate coming from the federal government, here, the Clean Water Act. And I do agree with that. You know, I'm tired of sewage and pollutants being dumped in my streams. I mean we're like a third world nation in that respect. Every time there's a little more than 1/10 an inch of rain in Omaha everything east of 72nd Street who has sewage goes into the stream. Who is going to pay for it? The homeowner, in retrofitting, is probably going to either pay for it or be taxed or "fee'd" under this system. If they put it in the fees can be waived. [LR94]

SENATOR FISCHER: If you're...you know, I guess I view this as a situation and a challenge that has to be addressed. I think under your scenario, using the low impact development, that has to take place over a long period of time and have buy-in from

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citizens. Don't you see the problem is getting worse as we take this time? Just a yes or no. [LR94]

MIKE RYAN: Uhhhhh..... [LR94]

SENATOR FISCHER: "Uhh"s don't count, come on. (Laughter) [LR94]

Mike Ryan: That's a pretty complex question to give a yes or a no answer to. Let me say a few words about that. [LR94]

SENATOR FISCHER: Short yes or no then. [LR94]

Mike Ryan: Education is going to have to happen. It's going to take some time. It's probably not going to get a whole lot worse because zoning codes should mandate all this stuff in new developments. So it should automatically come into new developments. The retrofitting is going to be the hard part. You know, going back into the existing areas of the city, and that's going to take a little time. But if you remember from that first slide, that's where most of our impervious stuff is. And all the rain that hits that, the dams aren't going to do anything for that. And when we look at dams, you know, taxpayers are going to have to pay for those too. [LR94]

SENATOR FISCHER: I guess I would just maybe comment that it's not just the rains that affect those areas, it's also runoff in the...my understanding is the current system that's in those areas. Just a couple short questions here. Do you know the cost to put this in at the bottom of your driveway, this cell? [LR94]

MIKE RYAN: You know, I'm looking at my driveway. If I have to hire somebody to do it...you know, I'm a fairly handy person. I can go rent a backhoe, and pay for the rental of the backhoe, and probably dig the hole in a few hours. And then I'll get some gravel, buy some gravel throw it in there... [LR94]

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SENATOR FISCHER: But do you have any idea of the cost? [LR94]

MIKE RYAN: I don't know. Under \$2,000. [LR94]

SENATOR FISCHER: That could be a lot for some homeowners. [LR94]

Mike Ryan: Yeah. [LR94]

SENATOR FISCHER: Secondly, do you know who paid for the site in Lincoln that you showed on your slides? [LR94]

Mike Ryan: Do I know who paid for that? [LR94]

SENATOR FISCHER: Was it the city of Lincoln? Do you know who paid for that? [LR94]

Mike Ryan: No I don't. [LR94]

SENATOR FISCHER: Okay. Thank you very much. [LR94]

SENATOR LOUDEN: Senator Christensen. [LR94]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. I guess I agree with you. I'd love to see all the LIDs I could, low impact developments, and as far as zoning some of that, I think it's a great, great deal. There's still the overlying problem, to me, it was quick for me to understand from the reactions of the crowd and different ones that people are concerned on bonding. I am the one that Senator Fischer talked about who let a bonding deal on my own district. And it's very difficult, because it hits me very hard as a farmer. But at the same time, it is our problem, and I see a lot of this here is your problem. I guess my point I'm making here is: I can see encouraging the cities and

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developers to have to use LIDs and things this way. I think that's great, I think we need to do it. I can see incentively trying to encourage current people to do what you're talking of doing on your driveways. But I could tell there was grumblings about having bonding authority. But my concern is...and we toured through the area, and the first thing to hit me was the fact if there isn't a design set up ahead of time and a plan and an ability to pay and to take care of this, we're going to have more disasters like downtown already is. And it costs more to correct than it does to plan. I guess my initial feeling is we need a bonding deal so that we can incorporate all the ideas you're talking about as well as whatever else we may have to meet the federal mandate. Now I guess I would encourage working with your NRD, your city developer, things this way. What can we do, and maybe as much as Senator Fischer and I hate mandates--I think you can include every senator here--maybe we can put in a bonding-type deal: so much LIDs have to be used. But there's still an overlying factor of huge rains that you're going to have to control, as Senator Friend's example off the roads. And things this way that I see you're going to have to have some of these other things also. And, you know, you gave me some ideas--I'm about to build another new home--that I will incorporate. And I guess I'd like to see how we can work together and put a strategic plan together; incorporate LIDs as well as a long-term plan. And I agree, I could see this area being all built up in 30 years. And if we don't have the authority to bond or raise money to take care of it, we're going to have crisis situations like I'm dealing with in my district, instead of planned situations. And I guess...I'll gladly listen to a comment from you...or...and if you want to talk to me afterwards...how can I help incorporate a long-term strategic plan to address both sides? [LR94]

MIKE RYAN: Again, a long answer is probably needed to answer your question sufficiently. But I'll say what I referred to before as a storm water utility and a storm water fee...my suggestion is that's the way to do it. You don't need bonding to do LID. This is the way they're doing it in other parts of the country. And they're doing this in other parts of the country. They're even doing it in other parts of the state. Sioux City is doing it, Grand Island is doing it, Scottsbluff is doing it. Maryland is probably the poster

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child. If you ever want to do any research, take a look at Maryland. They've got manuals on all different kinds of low impact development, how they fund it, their storm water utility. And you do have to keep on top of these features, you know. There is some maintenance involved. But there's maintenance involved with dams, a lot of maintenance. We've got Cunningham Lake right now, being maintained to the tune of I don't know how many millions. It's being renovated because it filled up with silt. Above Cunningham Lake and the watershed they didn't do low impact development. So we got a lake full of silt now. Or what used to be a lake full of silt. [LR94]

SENATOR CHRISTENSEN: I guess I would comment here. I'd like to encourage...I understand using the storm fee, water fee, sewage sink this way to...and I can see them downtown having to increase fees...72nd Street and over, and even across the whole town, to encourage LIDs. But how do you do that new development area when you got nobody to collect off of? Are you going to fee everybody across Omaha to do the new areas? [LR94]

MIKE RYAN: In a new development it would be part of your zoning ordinance. In other words, when that contractor brings his development plan into the planning department, he's going to have to prove to the planning department that he's included enough low impact development features to handle the storm water coming off his development. It's just like right now, he's going to have to show that he's got curbs that are going to carry the storm water, he's got sewers. You know, its the same problem, it's just a different way of dealing with it. And he's going to have to foot the bill for it, just like he's footing the bill for the curbs and the sewers and everything right now. [LR94]

SENATOR CHRISTENSEN: In other words all new development would be predesigned, prepaid for me by the lot you're paying for. [LR94]

MIKE RYAN: Chances are you're going to have a nice, pretty rain garden in your, you know, maybe your side yard and you're going to have features there that are going to

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take care of the rain water. They're different than the old-fashioned ways. It's changed...just like we all used to use septic tanks in the city. And there was a point and time where everybody probably had to hook up to sewers. I got a brother-in-law that didn't do that too long ago, just a few years ago. He's one of the big holdouts, but he finally hooked up. You know, it's the new way of doing things. They found that dams are creating more problems than they're solving. I'm a fisherman and hunter. If I'm here talking against dams...they're going to provide some fishing and I'm going to miss that. If I was here for my own self-interest I'd be all for dams. [LR94]

SENATOR CHRISTENSEN: Thank you. [LR94]

MIKE RYAN: Thank you. [LR94]

SENATOR LOUDEN: Other questions for Mr. Ryan? Senator Carlson. [LR94]

SENATOR CARLSON: Senator Louden. Mr. Ryan, help me understand that first map you put up with the red lines around it. Explain that quickly to me again. You said that area is not going to be helped by the dams. [LR94]

MIKE RYAN: What I was saying is any rainfall...what this NRD and what the EPA says...what this NRD has said for years and what the EPA says is: the storm water problem, both the quality problem and the quantity problem, is caused by all this impervious surface we've got in our cities. You know, it's the streets and the rooftops and the parking lots, all right. The yellow part there is the city of Omaha. That's where most of our streets and rooftops and parking lots are. Within that circle any rainfall that falls in that area is not going to be affected by dams, because all of the dams are upstream. Okay? Now rainfall that falls...you see that big dam up in the top dam site...3...rainfall that falls up there or around that, you know that maybe washes out of a farm field, I mean it's going to stop some of that. But all the stuff that falls in the city of Omaha that's in the Papio Watershed, the dams aren't going to do anything for that

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because that whole area is downstream from the areas. The dams, you can see them, they're all on the outside of that red line. [LR94]

SENATOR CARLSON: Okay, thank you. [LR94]

SENATOR LOUDEN: Senator Kopplin. [LR94]

SENATOR KOPPLIN: Well back to that, I'm not disputing your findings here, but that water that is behind those dams certainly would have travelled through the city if the dam isn't there. Isn't that correct? [LR94]

MIKE RYAN: The water that's behind the dams...any rainfall that falls above the dams that may be released out of those dams, yeah, would flow through the Papio system. Yeah. [LR94]

SENATOR KOPPLIN: Right. So if the dams aren't there it does affect this community because it's flowing down the Papio. [LR94]

MIKE RYAN: It can affect the community but what I'm talking about is the biggest part of problem. [LR94]

SENATOR KOPPLIN: Yeah, I understand that. But your comment was it doesn't do anything because it's below stream. Well it certainly does do something because it's... [LR94]

MIKE RYAN: No, my comment was it doesn't do anything for the rainfall that falls inside that circle. [LR94]

SENATOR KOPPLIN: In the city. Okay. [LR94]

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MIKE RYAN: Yeah. [LR94]

SENATOR LOUDEN: Other questions? I have one, Mr. Ryan. When you talk about retrofit to some of the areas that are already inside your red circle and your LIDs, you seem to be quite knowledgeable about this and everything. I'd pose this question to you: should you have something like what I would call reverse bonding? That if those people would put in those LIDs they would get a discount off of their property tax? [LR94]

MIKE RYAN: If there's a storm water fee initiated, that's exactly why I think one should be initiated. Because if you do your due diligence and you eliminate your storm water runoff you ought to get a credit. And the way they do it in other parts of the country, they call them different things. But lets call them debits. The average property owner has around 3,000 square feet of impervious surface. So if you equal a debit to 1,000 square feet of impervious surface you might have three debits. Well, I'll assume that your storm water utility is going to charge \$10 a year for each debit, \$30. If you go ahead and put in your low impact development features and you stop 90 percent of the water from running off of your property, you shouldn't be charged for 90 percent of that, you should only have to pay for maybe 10 percent of that \$30 a year. And where would that money go? We've still got out cities and counties that have streets that have runoff. And that money is going to go to pay for low impact development to handle that runoff coming from our public buildings and our streets, and you know, things like that. [LR94]

SENATOR LOUDEN: Okay. Other questions? Seeing none, thank you for your testimony. [LR94]

MIKE RYAN: Thank you. [LR94]

LYLE CHRISTENSEN: (Exhibit 3) Good afternoon, I'm Lyle Christensen, C-h-r-i-s-t-e-n-s-e-n. I'm senior project manager with HDR Engineering and we have been retained by the partnership to study the watershed, as we'll explain here. You

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should have a handout, if everybody has that. I'll be walking through that. Just for a point of discussion these are the main headers of the handout materials you have. We'll be talking about the recent activities from the partnership and the road ahead, some of the regulatory framework, some of the preliminary study results for both water quality and water quantity, and some conclusions of what we preliminarily know to date. So with that, I think we'll just roll right on ahead. This is a graphic that Mr. Wayne showed you a short time ago. I'll add a couple other items to that. There's been four stages of work to date, stage IV being in progress right now. It started out as stage I, from 2001 to 2002, which is...if I can get this to work, maybe I can...well, let's put it this way, it's the yellow band at the top. That is the 2001-2002, that's where the partnership was formed. And some of our initial work was to do some updating of the mid-1980s Corps of Engineers computer hydrology--and hydrology means peak flow prediction--and some of those older models to bring them up to the modern day software. And also to do some preliminary evaluation of the effects of future urbanization to full build-out conditions. The second part of that effort in stage I was to perform water quality modeling for pathogenic indicator bacteria, which it really means in that day was fecal coliform bacteria. That is sourced from warm-blooded animals and humans. That was in response to some stream impairment listings by the Nebraska Department of Environmental Quality. Stage II, which is highlighted in a light orange up there, is where there was a formulation of storm water phase two permits. These were for the communities that were not of the metropolitan class. They came first. City of Omaha is a phase one community. Phase two community was the smaller metropolitan-fringe cities around the metropolitan area. They were mandated to have a permit to manage storm water and to derive a series of proposed storm water management strategies. And one of which was to develop a water quality data and a system and to derive a storm water management plan over time. And that's really what we're talking about today. Stage III was in the green up there. There was a very focused effort with a lot of peer review and experts on two different groups to derive suggested policies to manage the watershed. These were enumerated by Mr. Wayne before, just as a quick highlight again: they dealt with some financing issues; peak flow reduction; landscape preservation, restoration,

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and conservation; erosion and sediment control; and flood plain management. And yes, low impact development is included in those policy groups there. August 2006 the policy was adopted by nine partnership members. And that's already been discussed. Stage IV which is highlighted in the light blue up there is where we are now trying to bring science to the table. And what that involves is some updated hydrologic and hydraulic--which is conveyance--modeling throughout the watershed. And as an editorial comment, this is where I think we can finally have an opportunity to see the best balance of solutions for the watershed. It's premature to outguess the exact solution until those results are in. We have retained a subconsultant named Conservation Design Forum from Elmhurst, Illinois. Their entire business is devoted to LID. So they're bringing some real-world experience to the situation about performance-based goals and objectives. Same thing for the possibility of reservoirs. So in stage IV, which is under progress, we are planning to do five modelling scenarios. That is: to evaluate the current conditions, the future build-out conditions with no new storm water management improvements, and this is just to get a framework around best-case, worst-case. We would do the same thing for future build-out with all low impact development strategies only. To see how much reduction we can actually get. And then we will do the same with all reservoirs as the only solution. And then the final one which everybody really believes will be the case is some combination thereof. And that's where there will be input from the public and advisory committees, elected officials, and so on, to try to find out what is the best combination. And some of those parameters may depend on things such as cost, performance-based objectives, how well do they physically work for the purpose intended for both water quality and water quantity. There might be some peripheral issues that come in about risk tolerance for flood inundation and flood damages. Some of it might even involve things like aesthetics. So those kind of parameters have not been decided yet. That's the job of the advisory committees to come up with how do you evaluate the best combination. Let's go into a little bit of regulatory framework here. I want to point out first why we have a problem from a water quality standpoint. Everything you see in red there has been listed by the Nebraska Department of Environmental Quality in their Integrated 2006 Report

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as being impaired. You'll see five circles around the area reservoirs. Those are impaired for a variety of reasons, mostly things of a nature of sediment and chlorophyll, which is an indirect measurement of the propensity to grow a lot of algae. Which then in turn is dependent on nutrient loading to those lakes. The stream segments that are outlined in red for the most part are impaired due to bacteria. And those indicator bacteria again are fecal coliform and now more modernly, E. coli, like you hear about in the paper for meat contamination, same type of deal. And so those are impairments and it's incumbent upon the Papillion Creek Watershed Partnership to address these because the basic truism is that you must exhaust all remedies to try to cause a betterment of the watershed. It's a lot of...the permits process in the United States...the permits are issued to point sources. The point sources means a pipe that directly discharges or even at an open ditch that directly discharges. A non-point source is more like, you think in terms of sheet flow, more of an indiscriminate type of a flowing into a watershed. The permits don't apply directly to that. That is a voluntary compliance thing. The EPA would estimate on a national basis that most pollution, by far--and you hear about the Gulf hypoxia issue--probably in the issue of 70 percent to as high as 90 percent--depending on circumstances--is non-point source pollution. Which means it's not necessarily something that's directly contributed by a pipe such as a wastewater treatment plant. So there's a great deal of effort nationwide to deal with the storm water issues. These permit that are issued, and these storm water permits are part of the NPDES permit program, they're issued on a five-year basis. So we're still in the first permit cycle. Those permit were issued in August 2004, here we are in just past August in 2007. So we're three years into the initial work towards watershed management planning. Let's look at some of the results that are just preliminary in nature. This was brought out early into our first stage of work. This is dealing with what could happen potentially with no new improvements from what was then the current situation to roughly 2040, which at that time was considered a potential for build-out in much of the watershed. That left-most map deals with color-coded percentage increases in imperviousness. And the darker the color the more imperviousness would be predicted. To get you a little bit more of an orientation here, the center portion of that illustration is the Papillion Creek

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Watershed that spans all three counties and the outer lighter yellow portion is the entire counties themselves. So the watershed does not take in all of the counties but it's certainly a good portion of it. In Douglas County it's about 1/2, at around 200 square miles, Washington County and Sarpy County both 1/4 a piece, roughly. So there's some high...percentage of imperviousness could increase on the order of very little in some of the rural, peripheral areas to over...significant, you know, around 19 percent or so. What does that do for flow quantity in terms of peak flow? That's on the right-hand side. This is kind of like looking at a Doppler map, so the darker the area is the higher the potential for runoff. So yes, in some of the areas the percentages may be in the lower range but there are some hot spots. Now this is just preliminary work that was done early on, before we had a chance to study the entire watershed with newer information. Figure four deals with water quantity and here is an area that is just to the north of the interstate on 84th Street, that would show some of the earlier floodplain mapping. Keep in mind that the mapping of this watershed was done in the mid-eighties under conditions that were prevalent then. The old FEMA mapping did not recognize the opportunity to consider future build-out. Simply it was present-day conditions. The blue fringe is what would be predicted in that area of the city with a future full build-out floodplain with no new improvements. So there's a fair amount at stake. This is just one example, one portion of the watershed. You see the effects of inundation and the property that goes under. And this doesn't include just private property. This will include public resources, public infrastructure, which flood insurance does not cover. So there's a great deal at risk with flood impacts. As an overall viewpoint the watershed is known to be very flashy. We haven't had any major events, really major events since the mid-sixties. And we're lucky on that. On the water quality issue some of the other facts that are worth knowing is that those stream segments are at least ten times over the water-quality standard. So there's a long ways to go. Can we get there? Maybe not. But we need to make the effort to at least try. And that includes a wide array of toolbox options, including possibly reservoirs, possibly LID...one of the issues with the regulations is there is no recognition of what design storm that you must need to meet compliance. And some of the best management practices are limited in their ability to

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respond to the larger storms. This is an illustration that you saw already. Let me add just a little about water quality and water quantity here. This is kind of a combined effort. The upper left is a typical water quality basin. This would also be similar to a low impact development solution on a smaller scale. It's trying to accomplish the same thing. The major thing that water quality relates to is sediment transport, things like phosphorous in the soil goes with sediment. Certainly the bacteria are usually sediment-attached. So the purpose of that first water quality basin is to slow the water down slightly. You'll see a 10x, 8x. What that really means is you'll probably get about a 20 percent flow reduction in the water quality basin alone. But for the purpose of sizing the reservoir, you don't count on that. Because you're dealing with a 100-year design storm, and for this area of the state that equates to about 6.7 inches in a 24-hour period. So that's a very large quantity of water. So that first basin there is mainly to help settle out some of the first-flush solids that come in there, which will then trap a lot of phosphorous and grit and sediment and things of that nature. And if it's a subsurface discharge it would also eliminate some of the floatable oils and greases. That then would conceivably go into a regional reservoir. Which you'll see there's two lines there: there's the lower normal pool; and then there's an upper flood storage volume. And there's a 10x, 1x, which means what comes into a reservoir is ten times greater than what goes out. And the way that's accomplished is you downsize the outlet pipes so that it absolutely restricts the flow, the potential flow. And the rest is stored above that volume. The normal full volume in this part of Nebraska is roughly about 3 percent of the drainage area served. That's what is sustainable. Does a combination like this address water quality concerns? Yes it does. It will definitely drop out things like bacteria to the tune of 90-plus percent, maybe as high as 95 to 99 percent, but that is not the only solution. When it comes to water quality it's far more complex than that. Because the minute you go one to three miles downstream you have more non-point source pollution coming in from sheet runoff and other storm sewer outlets. And yes, they will need control. So is there a combination needed between reservoirs and low impact development? Yes, probably. We just don't know what the combination is yet until we study it further. And one of the key things here is, we are going to model both and see the relative

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performance in the best combination from a very experienced Chicago-area firm who has actually done this. And what we're dealing with here is a 100-year storm criteria. Most low impact development applications are more in the two- to ten-year storm area. Where is ten-year storm is roughly 2/3 that of a 100-year storm. It's a little confusing there, but it's still a lot of water. And yes, you can design a low impact development for a full 100-year storm design but the it gets into cost issues and whether that is not a truly cost-effective solution compared to other options. And it's not all based about money. The other consideration is: who owns and maintains. One thing that you can account for very easily is what the outflow quantities are from reservoirs, because those are metered and measured. One of the difficulties with low impact development is a difficulty in accountability, on how they actually perform. Because there would literally be hundreds if not thousands and there's not enough staff in the public agencies to go around and measure the actual performance. People are staking their homes, their properties, and in some cases perhaps even their lives on the effectiveness of the design. The reservoirs are designed to high-hazard federal standards. The low impact development, to be of equal value for performance, will have to be designed similarly. So that's where the tire meets the road, is on performance. So those are some of the issues I wanted to bring out to you today. And I would be glad to entertain some questions. [LR94]

SENATOR LOUDEN: Questions for Mr. Christensen? Senator Christensen. [LR94]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. So you're going to look at every style of LIDs from the streets to the roofs, drains, things this way? Did I hear that right in your study? [LR94]

LYLE CHRISTENSEN: Yes. What is functionally happening right now is our (inaudible). It has...we have developed some templates over areas with mixed use or commercial, industrial, residential, multifamily, and tried to say what would they do different in our watershed to better the management of storm water. And then we'll apply that

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throughout the basin on those percent impervious shifts. And the one element that we'll not model is the green roof concept because of its obvious issues of how do you retrofit existing buildings and the structural loading on the roofs. Very difficult to add that much weight to a roof in addition to snow load and etcetera. But nonetheless, what they consider from their actual working experience, they'll pick the low impact development solutions that they think will fit in our soil type, our topography, and our climate. And we'll run with that and see how well that performs up to 100-year design standards.

[LR94]

SENATOR CHRISTENSEN: How do you handle the problem with West Nile and putting in more water basins? [LR94]

LYLE CHRISTENSEN: West Nile is...that's mosquito-borne. There have been quite a bit of research on that and that's...there are ways to combat that naturally with predator-type insects that will eliminate the mosquito larvae. That's done in the southern tier of states where I dealt with that and it's not a big issue. [LR94]

SENATOR CHRISTENSEN: Nebraska is increasing their issues right now, so... [LR94]

LYLE CHRISTENSEN: Yes, but when you get into Texas, Louisiana, and those places that have tried to do detention and construct the wetlands-type improvements, they have dealt with those issues and they do not have to use spray. [LR94]

SENATOR CHRISTENSEN: One more quick question. Will your LIDs be set up to handle 10-year, 20-year, 50-year rains? Will you look at it in all directions? [LR94]

LYLE CHRISTENSEN: We will be modeling 2-, 10-, and 100-year. The lower rainfalls are where a lot of the stream bank erosion comes from. So even though you might have a regional reservoir, there's still a need to look at the issues of stream bank erosion. And that's where the LIDs can help a lot, particularly on the lower end rainfalls. But

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when we're dealing with trying to keep the evaluation criteria the same, we will be looking at that 100-year performance as well. [LR94]

SENATOR CHRISTENSEN: Sorry, one more question. Who will make the final decision on what goes? Does the public get to make the decision or is that something done elsewhere? [LR94]

LYLE CHRISTENSEN: Well, as a firm, we're trying to be absolutely scientifically unbiased, and we pledge that. We are not going to make recommendations per se. We're going to say here are the results that are performance-based results and the advisory committees and the public and elected officials will look at the balance of those performance issues and decide the best combination. We will try different combination scenarios, give them some feedback on how best to balance. There's some things that should shake out pretty easily in terms of do we get enough performance for the effort and cost, etcetera. But there are some areas...we have to all keep in mind that this watershed is already in trouble. If we do nothing more and grew not another house, it's already in trouble. And what we're trying to do is mitigate the future damages. And also in some cases we have to reduce beyond present levels. So that's what is the preliminary results are already showing. [LR94]

SENATOR CHRISTENSEN: Thank you. [LR94]

SENATOR LOUDEN: Senator Friend. [LR94]

SENATOR FRIEND: Thank you, Mr. Chairman. Mr. Christensen, quickly, your firm's position in this study, one of the things that we're specifically studying is the review of the use of bonding and other financial mechanisms that would reduce the long-term costs and liability associated with the impact of urban growth on taxpayers in the affected areas. Should the Papio-Missouri NRD, or any other NRD for that matter, have bonding authority, do you believe? Or your firm's position, you're speaking in an

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official...as an attorney, an official standpoint from the firm's position. What's the firm's position? [LR94]

LYLE CHRISTENSEN: The firm doesn't take the position on this. But I will say this, I will say this... [LR94]

SENATOR FRIEND: Okay. So you haven't taken a position? That was the answer to my question. Does the firm have a position on...every city in this state has bonding and taxing authority, every one. Doesn't matter what class it is. You're saying a lot of the resources and the things that have to be done up here in your presentation can't be done by cities around this state, which the NPDES refers to. It doesn't refer to wetlands out in...or there aren't many wetlands out in your district, Mark. (Laughter) But it doesn't refer to ground that is not populated by a certain type of class of city. So what you're saying is the city bonding authority and taxing authority is not going to be enough to do all this, more or less. Is that a fair enough characterization? You want more tools in the tool box. I mean, it sounds to me like that's the prevalent...I've heard that for four years. [LR94]

LYLE CHRISTENSEN: Yeah, I understand. The issues are, if reservoirs are indeed found to be something that is necessary for the level of protection needed, then there is an optimum timing to put those in relative to the rate of growth. [LR94]

SENATOR FRIEND: Okay. Whose responsibility is it now to take care of flood control in the state of Nebraska? Without the bonding authority that an NRD might have, whose responsibility is it to take care of flood control? [LR94]

LYLE CHRISTENSEN: It's the flood management officials. And that can be on a local level and that can also be... [LR94]

SENATOR FRIEND: So if a dam is going to be built, who pays for it? I mean, who are

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the taxing authorities? [LR94]

LYLE CHRISTENSEN: Taxing authorities are each of the communities themselves...
[LR94]

SENATOR FRIEND: Okay. [LR94]

LYLE CHRISTENSEN: ...the counties have taxing authority, and so does the
Papio-Missouri River NRD. [LR94]

SENATOR FRIEND: What I'm getting to, and it's not 20 questions, what I'm getting to is, the ability is there right now to handle...there's two separate issues here we're talking about; flood control and then also water quality. The federal mandate deals with water quality. The other piece, cities and towns can deal with right now. What I'm asking, and this is for future folks coming up, is city bonding authority and taxing authority not enough? How much money is going to be enough to handle this problem? Because I've heard it for five years and I never had gotten an answer to that ever. And I'm not trying to be bombastic here or grandstanding. I can't get an answer to that. And Lincoln just passed a bond and they said they were going to take care of all of this. So I'm confused. As people come up, I'd like to hear viewpoints--and especially from engineers--who know exactly what they want the NRDs to have, Mr. Christensen. And I didn't mean to put you on the spot, but you happened to be there and you're speaking for the partnership. You guys want the bonding authority. You don't have to tell me that, I know that. I mean, it's clear to me and I understand why. I'm not criticizing you. I understand why. I'm just trying to figure out how much it's all going to cost. Because there's two separate issues here and just because we're specific about the bonding authority doesn't mean that it's going to handle all of the problems we have in flood control and water quality. I'm just trying to figure out what is going to end up being enough. And in five years I haven't got the answer to that question. What's going to be enough? What is the number that we're going to need to fix the problems in Omaha, Lincoln...what was it,

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a \$10 million bond in Lincoln? Anyway, thank you for letting me vent. It has nothing to do with you. [LR94]

LYLE CHRISTENSEN: No, I understand. I understand. [LR94]

SENATOR FRIEND: You're in a position that I thought you might like to throw out the partnership's idea about why the bonding authority should be put in place for the NRDs all over the state. So... [LR94]

LYLE CHRISTENSEN: Well, I don't want to preempt my people that will testify after me. But one of the things is timing and ability to keep pace with development. That is the question. And the local taxing authority may not be able to do that. [LR94]

SENATOR FRIEND: That's fair enough. [LR94]

LYLE CHRISTENSEN: One of the things that is also realized here is that this isn't confined to Omaha or any one town. It's a multicounty, multijurisdictional... [LR94]

SENATOR FRIEND: That's absolutely right, but it is confined to cities. NPDES is telling communities that they have to deal with the impervious...I mean, again, separating flood control from water quality. I mean, I understand your point. But this is a city mandate. We have city officials that come down every year and say, we need that extra tool, we don't want to tax our people, property taxes are too high. Yeah, I know. I hear it all the time. But the fact of the matter is, this affects cities. This is a mandate on the cities. [LR94]

LYLE CHRISTENSEN: Well, let me comment on that. [LR94]

SENATOR FRIEND: The water quality piece. [LR94]

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LYLE CHRISTENSEN: I will comment just briefly and see if anybody else had any questions. The key truism here is that water quality and quantity are inherently linked. The flood protection has nothing to do with the federal program from NDEQ other than it's trying to achieve some watershed planning to help both the water quality, at the same time deal with some of the quality issues. But the two are inherently linked. So DEQ is not in the position to say you must build this or that. That's entirely the directive of the local officials and the public risk tolerance issues. [LR94]

SENATOR FRIEND: Okay. Fair enough, Lyle, thanks. [LR94]

LYLE CHRISTENSEN: So really, and you're dealing with an SID process around this area which is entirely different than the way Lincoln develops. They annex. And here's an independent SID that is quasi public-private. You know, developer starts out with it but inherently... [LR94]

SENATOR FRIEND: Yeah, but state law...thank you. [LR94]

LYLE CHRISTENSEN: Yeah. [LR94]

SENATOR FRIEND: There's a lot...I don't mean to cut you off but it was my question and I didn't want...they have state authority. They have express statutory authority to do so. What we're talking about here is expanding the idea of allowing members of elected bodies, mind you, to go out and force taxation on a citizen. And we start getting into some weird ground. So anyway, thank you, Mr. Christensen. [LR94]

LYLE CHRISTENSEN: Granted. [LR94]

SENATOR FRIEND: Sorry, I'm done. (Laughter) [LR94]

SENATOR LOUDEN: Anyone else have questions? You were pretty good because you

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answered everybody's question, I guess. (Laughter) I have one question. When you mention you're going to have the study, how long or what time frame do you have until when you'll come up with your conclusions? [LR94]

LYLE CHRISTENSEN: We are working on a fastest track possible to have some preliminary results, at least on the peak flow predictability, the performance by mid-fall. The actual study will probably terminate first quarter of 2008. There will be a series of meetings and public forums and one-on-one visits to explain this to the stakeholders. [LR94]

SENATOR LOUDEN: And then that's when there will be some type of a plan that you recommend in the first part of 2008. Is that what you're telling me? [LR94]

LYLE CHRISTENSEN: Well, again, we're going to show results and let the people evaluate the risk tolerance and other parameters that they feel are appropriate. We need to remain absolutely objective in order to have this to be a real process. [LR94]

SENATOR LOUDEN: Okay. Thank you. Other questions for Mr. Christensen? Seeing none, thank you for testifying. [LR94]

LYLE CHRISTENSEN: You're welcome. [LR94]

SENATOR LOUDEN: Next testifier, please. [LR94]

MARTY GRATE: (Exhibit 4) Good afternoon, Senators. My name is Marty Grate. I'm the environmental services manager for the city of Omaha and I appreciate this opportunity to testify before you today. As many of you saw earlier today, the city of Omaha and residents in this metropolitan area face some pretty huge challenges in addressing our needs for flood control, for storm water management, and for reducing our combined sewer overflows. Meeting the federal water quality mandates and protecting area lives

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and property from flooding will require some major financial investments. And Omaha understands that there are very limited funds available at the state and federal level to assist us with these costs. Urban water issues are as critical and urgent this year as the rural water issues were last year. Omaha has recently entered into an order on consent with the state of Nebraska, binding us to implement a 15-year sewer improvement plan that is estimated to cost \$1.5 billion in today's dollars. These costs are separate and in addition to Omaha's share of the statewide needs for managing discharges from separate storm sewers. They're also separate from the expenditures needed to maintain or reduce runoff associated with new development in the metropolitan area. In June of 2006, to satisfy our state permit requirement Omaha formally amended our master plan and adopted the six policies recommended by the partnership that had been described earlier today. Omaha does believe that a watershed management approach that includes a combination of structural and nonstructural management practices must be implemented in order to effectively meet the interrelated needs for flood control and water quality management. Similarly, a combination of funding sources and lead agencies makes the most sense if we are to establish and maintain a watershed management plan that is both effective and sustainable. The storm water management element of Omaha's master plan includes regional water quality and flood control structures to be funded through development fees and NRD funds. A regional approach to storm water management will offer the same economy and efficiencies and reliability that this region enjoys from regional sewage treatment, from regional drinking water utilities, and from regional solid waste management. Additional coordination is certainly needed to determine exactly when, where, or how many of these water quality or flood control basins will be needed. However, we do know now that even the immediate needs will require some form of financing as opposed to a pay as you go. Omaha believes that the Papio-Missouri NRD is the most appropriate agency to coordinate the implementation of necessary regional water quality and flood control structures in this area. The NRD has the best combination of technical expertise and jurisdictional authority that makes really them the obvious choice for implementing a regional storm water plan in this area. Omaha's master plan includes this philosophy and by policy

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Omaha supports bonding authority for the NRD. I want to thank Senator Louden and the members of the committees for having us here and for your commitment to Nebraska's water resources, placing the emphasis that's needed on the urban water issues this year. And I certainly would be happy to answer any questions you have. I'd love to take a shot at Senator Friend's questions about financing and how, at least from Omaha's perspective, we see this playing out in terms of pieces and parts and roles. [LR94]

SENATOR LOUDEN: Questions for Mr. Grate? Senator Fischer. [LR94]

SENATOR FISCHER: Thank you, Mr. Grate, for being here. On the second page of your testimony when you concluded, you said that the city of Omaha believes that the NRD is the appropriate agency to handle this because of the regional aspect of it and also their expertise in the area. You went on to say that the city supports giving bonding authority to the NRD. Does the city of Omaha believe that the NRD can coordinate this effort without that bonding authority? [LR94]

MARTY GRATE: It's currently our belief and consistent with the policies that we adopted that bonding authority is a key part of the overall plan that's necessary in order to, again, act quickly enough to get in place the systems that are needed for both short-term and long-term flood control needs. [LR94]

SENATOR FISCHER: Can the city of Omaha bond? [LR94]

MARTY GRATE: Yes, the city of Omaha can bond. [LR94]

SENATOR FISCHER: If the city of Omaha can bond and some of the other partners in this, why is it necessary to bring in bonding authority for an NRD to be part of this? Why can't the other partners in this, cities, bond in order to do it and then have the NRD coordinate it, like you said the city of Omaha supports? [LR94]

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MARTY GRATE: Well, and I'm not saying that that is not possible. We have talked with our legal counsels and they say that, well, yeah, there may be some way through interlocal agreements that we could do something like that. But again, what my testimony was trying to get at was that the NRD--and if you turn around a look at, you know, the poster on the wall behind you--part of their mission, you know, their integral mission is flood prevention and control. And a lot of these structures that we believe, you know, may be needed--we don't know how many, we don't know where or when--but some of them are likely to be needed some combination of LID and flood control reservoirs. The NRD's role in this, their mission really is that flood control component. It just makes most sense for us for them to take charge of that, including the financing. You know, we need to work together to generate the funding for it. But if the NRD is going to be the ones that manage a construction project, they should be the ones that manage the financing and the repayment. I think it works better. Is that the only way it can be done? No. I think it's a preferable way. [LR94]

SENATOR FISCHER: Did the city of Omaha support all the missions that Mr. Wayne talked about at the beginning that the partnership came up with? [LR94]

MARTY GRATE: The city of Omaha... [LR94]

SENATOR FISCHER: The city did. [LR94]

MARTY GRATE: ...adopted the six policies. [LR94]

SENATOR FISCHER: Did Douglas County support all of those? [LR94]

MARTY GRATE: Douglas County has not. [LR94]

SENATOR FISCHER: And which ones have Douglas County not supported? [LR94]

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MARTY GRATE: I can confirm what you heard earlier. Douglas County has specifically opposed bonding authority. And they are not supportive, at this point in time, of the partnership's recommended plan for regional flood control. [LR94]

SENATOR FISCHER: Okay. Thank you. [LR94]

SENATOR LOUDEN: Other questions? Senator Friend. [LR94]

SENATOR FRIEND: Hi, Mr. Grate. The, real quickly, \$1.5 billion, you've actually put a number to it, a 15-year sewer improvement plan that's estimated to cost \$1.5 billion. Thank you. And I'm not being sarcastic or facetious. Now if you don't...if the NRD doesn't get any bonding authority, let's just say this is a hypothetical out into the future, and then the federal government comes in and says that's it, the hammer is down, you better...not only do you need a plan, this has got to be done by 2026 or whatever, and if it's not you're going to get fined, you know, for every year that you're late. I don't know how they do it. But the bottom line is, if you have what you have right now to fix this problem, where do you go to get the funding to fix this? [LR94]

MARTY GRATE: I need to back up for a minute. I hate to disappoint you because you were almost congratulatory there. That \$1.5 billion is to address city of Omaha's combined sewer overflows, has nothing to do with flood control, has nothing to do with storm water. [LR94]

SENATOR FRIEND: I understand, I understand. [LR94]

MARTY GRATE: But that part...that's for that part of the overall program. [LR94]

SENATOR FRIEND: Right, right. [LR94]

MARTY GRATE: Okay. And the way that we are going to generate the money to effect

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that plan--and again, we've signed an agreement with the state and committed to doing that by October of 2024, completing this plan--that money will be generated by fees that we will charge for all of our wastewater, our sewer customers. Omaha provides sewage treatment to a much larger area than Omaha. All of those customers will pay in and we will use bonds that will be issued roughly every couple of years to finance it. The bonds will be repaid through the fees as a source of funding. [LR94]

SENATOR FRIEND: Okay. [LR94]

MARTY GRATE: But financing will be done through revenue bonds that we issue. [LR94]

SENATOR FRIEND: Okay. And take it a step further and talk about pure storm water runoff, which is a little bit of a separate subject, I guess. Now you can't charge fees on that right now. You can't charge a storm water fee right now. Correct? [LR94]

MARTY GRATE: Our ability to collect the fees... [LR94]

SENATOR FRIEND: Part of handling this problem is handling the storm water runoff, according to the NPDES, correct? [LR94]

MARTY GRATE: The NPDES storm water program... [LR94]

SENATOR FRIEND: Right. [LR94]

MARTY GRATE: Yes. I mean, there is an interrelated program that's specific CSOs and we can use sanitary sewer fees for that. We could not use sanitary sewer fees to fund separate storm sewer programs. [LR94]

SENATOR FRIEND: All right. I mean, we're talking about different dogs here. [LR94]

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MARTY GRATE: Yes. [LR94]

SENATOR FRIEND: I mean, I don't see...Marty, I don't know, I don't see--and I'm going along with Senator Fischer here--nobody has ever convinced me, in the amount of time that I was talking about earlier, that the bonding authority and the taxing authority and all the things that are in place to take care of these problems isn't enough. All you need to do is go out and look in the taxpayers' faces and say this is what we're going to do and this is why we're doing it. But what I always get the feeling is they're coming in and saying this is probably a better way because either some other state did it or we're able to hide the fact that we're, you know, going to gouge somebody. That's what the term "fee" means. We're going to hide the fact that we're going to go gouge somebody. So I don't know. I mean, quickly, your comment, Marty. I mean... [LR94]

MARTY GRATE: Yeah, and I will try to be brief, but I... [LR94]

SENATOR FRIEND: ...this can be...all of this stuff can be taken care of. It's going to be really expensive and it's going to be done in a very orthodox way and it's going to be put on people's property taxes. And they're going to look at it and they're going to go, this is horrible, my property taxes are high enough anyway. Well, guess who gets the heat when the property taxes go up? It's city officials, right? [LR94]

MARTY GRATE: Yeah, again... [LR94]

SENATOR FRIEND: In every city that does it. So I'm just saying, I'm just saying your view on the long term if the state doesn't give the NRD anything and it doesn't give the cities anything extra, your view on the long term, what happens. Does it get done?
[LR94]

MARTY GRATE: On the long term. If we don't get any more authorities, if the NRD can't

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bond, if we don't get storm water fees that we can charge for those areas that aren't combined sewers, what I see happening in the city of Omaha is the same thing we're facing today with the CSO program, is we're going to putz around with it, we're not going to take the steps we need to take, and we're going to get in trouble and we're going to be forced into making some dire things. Right now what that will mean is it will be a huge property tax boost. If right now we have an opportunity to get out in front of it, to do something with a planned effort to manage storm water, we won't be in the catch-up kind of program that we are with (inaudible) sewers. We don't want to end up with the same kind of end-of-pipe treatments that we're going to have to use on our combined sewers on all of our storm sewers. We want to manage it proactively. We need to do that through the right combination of LID, the right combination of regional facilities, and we need money to plan and to implement that. I think bonding authority makes sense for the NRD to fill one small role in that and I think that utility legislation like was suggested earlier is important to help fund some of this development program and also on an ongoing long-term basis to fund operations and maintenance of whatever facilities we construct. That's the kind of package I see. That's the vision I have. [LR94]

SENATOR FRIEND: Okay. Thanks, Marty. [LR94]

MARTY GRATE: You're welcome. [LR94]

SENATOR LOUDEN: Senator Christensen. [LR94]

SENATOR CHRISTENSEN: Do you...does the city of Omaha have jurisdiction over this whole area we're talking about here? [LR94]

MARTY GRATE: No. The city has jurisdiction within three miles of the city of Omaha. Through the partnership, we help to coordinate overall plans and the partnership itself simply makes recommendations to the other jurisdictions which their elected officials

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have to decided on. [LR94]

SENATOR CHRISTENSEN: Thank you. [LR94]

SENATOR LOUDEN: Other questions? I have one question, Marty. Does the city of Omaha intend to try to implement or retrofit any of these low impact developments in areas that haven't done that in established areas? [LR94]

MARTY GRATE: Certainly. We are looking very closely in conjunction with redevelopments going on throughout town to increase green solutions, natural solutions, preventing runoff from getting into the sewers to begin with. We're trying to filter runoff so that the pollutants don't have to be treated as much before they go to the river. And so, yes, we clearly want to do both existing. Can we handle all of it that way? No. [LR94]

SENATOR LOUDEN: Have you got any kind of a plan or are there any plans in the works to do any of that in established residential districts or anything? [LR94]

MARTY GRATE: Some of the things that we're doing in the urban cities are using some of the grant monies that the Legislature provided under LB1226 last year to look at some green roof projects, to look at some landscaping sort of projects, some rain gardens, and to see how we can make those extendable into commercial developments, into residential developments. We're looking at educational efforts to get people to do some of the things like Mr. Ryan was talking about. So I think again, a comprehensive approach where we look at the right combination for Omaha and this region and this climate and this soil type to combine low impact with structural control, this is really our smartest move. [LR94]

SENATOR LOUDEN: Yeah. And that would be just for water quality. It wouldn't have anything to do with your sewer system that you're having problems with, then. [LR94]

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MARTY GRATE: The low impact development sort of approaches the green solutions can provide benefits both in the CSO area and in the storm water area. So that's across the region. It's beneficial. It simply isn't the answer in and of itself. [LR94]

SENATOR LOUDEN: Okay. Thank you. Other questions? Seeing none, thank you for testifying. [LR94]

JOHN FULLENKAMP: Mr. Chairman, members of the committee, my name is John Fullenkamp, J-o-h-n F-u-l-l-e-n-k-a-m-p, and I'm an attorney here in Omaha. My practice generally relates to real estate development so I've commonly been referred to as a development lawyer. I testified at the Urban Affairs Committee on the legislative bill that requested to grant the NRD tax levying authority. And I guess I'm here to answer some questions and also just to help you a little bit understand the perspective of the people that build new houses and continue with the growth of Omaha. And I actually think the last minute of Marty's testimony probably really crystallized and capsulized what this partnership is trying to do. You know, when it rains, first it rains in Bellevue, and then it rains in Papillion and Papillion's water goes to Bellevue, and then it rains in LaVista and LaVista's water goes to Papillion and then it goes to Bellevue, and then it rains in Omaha and it goes to LaVista and then it goes to Papillion and then it goes to Bellevue, if it rains in Sarpy County. And you can imagine the difficulty of everybody trying to tell everybody else to control their own rain water. And we have this shell game that happens in Douglas County and Omaha where we have a sanitary improvement district process where we develop along major streets and the city will wait to annex until the county puts the street in and you just have all sorts of difficulties intergovernmentally as to how to get things done. And I'm sure you people deal with that kind of situation all the time between, I don't know, the university or whoever. But in any event, it seemed very appropriate and very forward-thinking for someone to grab this situation by the throat and say, all right, you've got nine jurisdictions here and somebody has to take this and come up with some vehicle that would be binding on everybody. And so can you

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imagine all nine governments getting together and all their representatives and all their interested citizenry for the last three years as we've been sitting in this room debating something that's fair and equitable. And again, you know, you folks in your position, it's always about balance. And I suggest to you it's going to be about balance again. And it's going to be balancing the converging views and the different viewpoints. I mean, we have people that obviously, since there is a map that shows a big piece of blue on a property and it happens to be on top of somebody's farm, well, obviously you may not like that for one of two reasons. Number one, you may not like the fact that it's there in the first place. And secondly, you might feel held hostage because you don't know if anybody is going to get to build on it in the next ten years or whether the funding is in place. And so you can't sell it for development or you can't sell it for something else. And what do you do about that? You're kind of crying for a solution and that probably leads to some frustration. And also frustration that's equally apparent when, well, why should I let my valley be dammed up just to protect somebody that's downstream from me; I didn't cause that problem. And again, that's the difficulty and the hairy part of this situation. One of the things I guess I want you to know is what's occurred in the development business in the last five years. And the stack of papers here, and I'll be glad to provide copies or any of this kind of information to anybody. But the way development is done, particularly single family and commercial development, is we are not unsensitive or unaware of the obligations of the Clean Water Act. Many of the aspects of low impact development are being implemented. You know, if you're grading a subdivision five years ago, you grade in the streets, put the storm sewers in, and let it go. And then you'd plant it. Well, now you have a soil sediment erosion control plan; you have a mandated SWPPP, which is storm water pollution prevention plan; you have hundreds and hundreds of inspections; you have the EPA and in town you have a web site that the city of Omaha has that you have to provide weekly reports to; you have scheduled clean-outs of silt fences that are in every downstream street; you now have what's called Gutterbuddys, which is an interesting little thing, it's like that long sack of sand that you used to put in the back of your car that's along the storm sewers at every inlet; you have detention basins in subdivisions that didn't used to be there. All of these

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really are all green techniques that have been employed. So there's been a tremendous improvement in water quality and in retention of water and in the speed with which water comes off the sites, not only in the residential but in commercial. And let's take one of the greatest, people like to pick on, is Wal-Marts. And one of the things in Omaha that led to what you may have read about, our Omaha By Design, was a Wal-Mart that was built on the old Avaya property between 132nd and 120th Street. That happens to be in my neighborhood. You drive right in to the front of that thing, now they've got a big parking lot there, no question about it. But you drive right into there and you drive by this little green area. Now if you happen to peer up over that, you would see that that's a permanent water detention basin where they store their water temporarily. It slows it down off that site. Omaha By Design came along, an initiative that took four years, perhaps you've read about in the paper, and now parking lots have to have at least 7 percent of that coverage being green. Those could be made into...those green areas probably could be made into rain gardens, they could be made into, you know, a better green facility than it has. Next to that Wal-Mart today is being built a new Target store, a Super Target. They have the most sophisticated underground detention system you've ever seen. Those pipes are bigger, twice the size of that window. And it's stored under their facility. I guess I don't want, because either what you read in the paper or whatever, to think that the development community is not sensitive to this problem. What the development community is looking for, and we ask to be part of at least the discussions about the partnership and would ask to be, continue to be in that development. And you know, low impact development is one of those things that maybe it's too good to be true, maybe it isn't. A lot of low impact development procedures are being adopted, can be adopted. The development community is not saying that low impact development isn't appropriate. What they would like to question have discussions about is the balance and how much of it is appropriate. I think you all know we've got a bit of a housing crisis going along in the United States. It's certainly not as severe in the state of Nebraska as it is elsewhere. And the reason it's not severe in the state of Nebraska is that our housing prices have always been fairly modest. Now that's maybe to belie some of the stuff (laugh) you saw earlier that some of the...the

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multimillion dollar houses. But the bread-and-butter people in the state of Nebraska probably live in a \$150,000 house and most of my clients are building in that market. And I guess I would ask you to be sensitive to this. Every time you look at some new development technique, you need to balance it against the cost of this development. Every time you add \$1,000 to the price of a house, you eliminate 1 percent of the market. Now one of the big crises in the housing market right now is affordability. And it's how do you get a school teacher, fireman, plumber, you know, regular ordinary folks into houses? And the clients that I represent that build in that market, we're finding that increasingly difficult. You generally have to rely on two incomes. That's just a way of life. And so we will continue to hopefully be part of this process. We'll continue to argue for what's reasonable and for what's balanced. That doesn't mean to say that low impact development is not appropriate. A couple of things that Mike Ryan said, I mean, he said...I think he said that low impact development would take care of all of it and that dams do more harm than good. I guess I would seriously ask you to think about those two statements to see if you think that that is in fact the truth. We in the development community looked at this situation and said, okay, it seemed to us that experts in this field were the NRD and their engineers and that they were more appropriate than all of the cities in all the conflicting jurisdictions and that the regional detention, like it's just out your window, and besides the fact that it's an absolutely gorgeous facility, it's predictable, it appears to be safe, and that appeared to us it would be better for the development community to be part of the funding of that sort of a process rather than take a...if you're developing a 160-acre farm and you got to stick a 2-acre pond over in the corner. And maybe it would be more appropriate on a fee-based thing to help with that process. And what we talked about, and Senator Friend, we did some numbers to analyze this \$30 million worth of dams that would have to be built over the next so many years. And the development community came forward and said, now if you guys can go get your bonding authority, we'll split this cost with you and we'll put a \$500 fee on every new house that we build, but that's if you can do your part of it, too. So I think...I guess I just tell you that so you understand that nobody is just sitting back there and trying to ignore this problem. The people that build houses are trying to be part of the solution. I

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don't think we want to stop building houses. I think our economy stifles and dies if that's happened. And I think if we make it too expensive, we injure it. I've been at other...I don't know if I've been to senators committee, but I've testified about urban sprawl. You know, Omaha's master plan and not Omaha and Bellevue and Papillion and everybody that's around here in the urban areas master plan is based on open up some green space but have the rest of your development be compact. And the reason you want the rest of your development to be compact is you don't want to stretch out this city another 20 miles and have to put the storm sewers and highways and everything else that goes with it and all of a sudden we have an Atlanta where you have to drive, you know, and hour and a half to get to work. Even with the incredible growth that's happened in our urbanized area here, we still have a city and an area that you can get from Bellevue to downtown Omaha and you can even get from Bennington to downtown Omaha in a reasonable period of time without using all the gas in the world. So I guess I would just say to you that the people that represent the developers would still like to be part of the process. We are not opposed to looking at low impact development techniques. We don't see them as the total panacea for everything. We'd like to have those balanced with the price of homes and the necessity of having affordability for those people that need it. And we do think that the experts that the NRD employed are correct in that the regional detention is the way to go rather than the prairie potholes and that we support the couple cents or whatever it is that they need to raise necessary money, combined with the fees to get whatever it is, if it's 5 or 29, built over the next so many years combined with other techniques. And so I'd be happy to answer any questions. [LR94]

SENATOR LOUDEN: Questions? Senator Carlson. [LR94]

SENATOR CARLSON: Senator Louden. Mr. Fullenkamp, sometimes you hear people make a statement about something that's got a figure in it and you take it as truth and have no idea where it comes from. It's just interesting, you said for \$1,000 increase in the purchase price it eliminates 1 percent of the buyers. Where did that come from? [LR94]

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JOHN FULLENKAMP: National Association of Home Builders. [LR94]

SENATOR CARLSON: Okay. So that's then verified as far as you're concerned. [LR94]

JOHN FULLENKAMP: It's a documented fact. [LR94]

SENATOR CARLSON: Second question is, you are supporting granting the NRDs bonding authority. What's the advantage of the NRD bonding authority? [LR94]

JOHN FULLENKAMP: I just think they're the right agency to do it and that's kind of why I went through that little scenario, when it rains in Bellevue and keeps going up the stream, and all the difficulty that it has trying to get everybody together. If they could pick a lead agency, which I think what Mr. Grate was alluding to, and then all of the other areas said, okay, you levy the tax, we'll pay...you know, Papillion will pay our fair share and Bellevue will pay our fair share and Bennington will pay our fair share, arguably you could do it that way. I think it's probably cumbersome to try to believe that that would occur efficiently because, I don't want to pick on politicians, but I can just see a city council in Bellevue having a different viewpoint than the one in Papillion or LaVista when Omaha is the big dog and let them do it. You know, and it's their water and all that sort of stuff. So I just think that an umbrella organization with a partnership with those people participating who has control of the funds is probably a more appropriate way to do it. But it could be done some other way. [LR94]

SENATOR CARLSON: Now a property tax is based on property value. What's the NRD taxing based on? [LR94]

JOHN FULLENKAMP: Property value. [LR94]

SENATOR CARLSON: Same thing? Okay, thank you. [LR94]

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JOHN FULLENKAMP: Just like a small fire department or... [LR94]

SENATOR LOUDEN: Senator Fischer. [LR94]

SENATOR FISCHER: Thanks, Mr. Fullenkamp, for being here. You just told Senator Carlson that you believe that the NRDs should have bonding authority on this project and that they should be the lead agency on it. I'm sure you're aware that NRDs have the power of eminent domain. [LR94]

JOHN FULLENKAMP: Yes. [LR94]

SENATOR FISCHER: With this bonding authority, if reservoirs would happen to be in the future plan--and I have nothing against reservoirs, I think they are very appropriate in many instances and in my part of the state also--but if they are determined to be part of the plan here and I would imagine that the property owners will see their land taken by an NRD's authority of eminent domain for what is called a fair price. Would you agree to that? [LR94]

JOHN FULLENKAMP: Yes. [LR94]

SENATOR FISCHER: In such a case, do you think it would be appropriate if the state would step in and limit what NRDs can do with that property after reservoirs are built and the project is complete? Or as a developer, do you feel that NRDs should have the right to sell that land then to developers to possibly pay off bonds in the future? [LR94]

JOHN FULLENKAMP: Sometimes the taxing authority will find out some of the property they took they didn't need, and I think they should have a right to dispose of it. I think there ought to be proper foresight at the front end as to what is going to be taken and don't just give the NRD authority to go out and take a bunch of ground if there isn't a

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demonstrated need that it has to be there. Because I don't think...I think that a farmer who owns the property or a landowner owns the property under one of those potential reservoirs, it is in a difficult spot because they have...they really couldn't sell that ground for development today and get the same price that somebody could get up on the hill because they're underwater. Now maybe it's a happenstance of geography that they're underwater. But...and I don't think that a reasonable limit on what it could be used for...I mean, if you were saying can it be just for the retention and detention basin and that's it and you shouldn't be able to do what you did around this facility here and build buildings and have a big park, that's a legislative function. I don't...I happen to think this is nice. But maybe it's not essential to the flood control part of life and the water quality part of life. [LR94]

SENATOR FISCHER: Right. You know, we took a tour today and we saw a few housing developments around lakes. And the comment was made that people enjoy, you know, being around water. It's lovely to build a house on the beach. It's lovely to build a house on a lake. But when you're...I guess when we're discussing here about giving NRDs bonding authority and realizing that they do have powers that might be viewed as having the possibility of being misused, I get a little leery... [LR94]

JOHN FULLENKAMP: I understand. [LR94]

SENATOR FISCHER: ...about taking...the takings part of it. [LR94]

JOHN FULLENKAMP: Taking the property... [LR94]

SENATOR FISCHER: Taking private property. [LR94]

JOHN FULLENKAMP: ...and the property next door all of a sudden has got houses sitting right next to it and there was the lake. [LR94]

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SENATOR FISCHER: Taking private property and profiting over that. [LR94]

JOHN FULLENKAMP: Yeah. I do have a comment about that. Number one, there's probably been a hundred subdivisions developed in Omaha, Douglas, and Sarpy County in the last ten years; probably three of them are around reservoirs. So there's kind of an assertion that the developers want this to occur so they create a body of water so they could build houses around it. I'm here to tell you that's not the fact. (Inaudible) (Laughter) Now there are some lake developments in there, three or four in this area, where that has occurred. Now I think the NRD would argue that they got more out of it than they lost and the developer had to put more money into building a dam that they didn't have the money to build and so forth. But the bread and butter of the housing market and the people that I represent...now we happen to have a client that's building this development that's just right up the hill here. This was here first. Then that farm came for sale. We didn't come out here, try to get somebody to build a dam so we could look over it. And that's not as...it's just not as prevalent as everybody makes it out to be. My clients, we could care less whether there's a body of water there or not. What we care about, people will pay a premium, certainly, if they could see water. If I could build a house right up here on this ridge, absolutely that piece of property would be worth more. I'd like to be next to the school, I'd like to be on top of a hill, I'd like to be next to a park. I'd like to be a lot of different places that have demonstrated higher values. Are bodies of water one of them? Sure. And so you know, that's a difficult task to figure out how to limit that. I don't see that there would be any problem with trying to do that so that it isn't a profit for somebody, you know, to sell the lake and keep the high ground. I mean, maybe it all ought to go, you know, and maybe it ought to be enjoyed by everybody. [LR94]

SENATOR FISCHER: A public facility. [LR94]

JOHN FULLENKAMP: I'm kind of a liberal kind of guy in a very conservative business. [LR94]

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SENATOR FISCHER: Uh-oh, and I think I was agreeing with you for a minute.
(Laughter) We need to be careful about that one. [LR94]

JOHN FULLENKAMP: Sorry about that. Once in my life I got to play Cypress Point golf courses. One of the most beautiful golf courses in the world, I don't know if there's any golfers here, but... [LR94]

SENATOR FISCHER: So maybe... [LR94]

JOHN FULLENKAMP: Let me finish my analogy, if I could. You walk across this highway and you walk onto this three holes of this beautiful private golf course. It's the most beautiful land on Earth, it should belong to the public. It shouldn't be a private golf course. And my analogy is, if you want to make these facilities because there is a natural attraction to them open to the public, then they ought to all probably be public. And restricting, you know, involvement from a developer, that wouldn't be the end of the world, in my personal opinion. Now some people might not share that, they're in my same business. [LR94]

SENATOR FISCHER: Okay. Thank you. [LR94]

JOHN FULLENKAMP: You're welcome. [LR94]

SENATOR LOUDEN: Questions? Yeah, I have one or two, Mr. Fullenkamp. When you talk about these developers paying part of the ticket on some of these regional retention systems, what would you expect? Would you expect the NRD or somebody to build them first and then they would pick it up? I mean, or should they go out there and buy the land to develop it and then go to the NRDs to... [LR94]

JOHN FULLENKAMP: What we were willing to do if--and "if" is a two-letter word, but it's

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a big one. The development community said if you can go get the bonding authority and you can find a way to get these built, we will, out of a building permit and all of this partnership area, pay \$500 per a lot every time a house is built. And it just goes into the pot. So it's not taking that money and saying go build this one or go build this one, because that's really not going to accomplish the purpose. The purpose is... [LR94]

SENATOR LOUDEN: In other words, you're setting up a fund... [LR94]

JOHN FULLENKAMP: Exactly. [LR94]

SENATOR LOUDEN: ...to do this is what you intend to... [LR94]

JOHN FULLENKAMP: That's exactly right. [LR94]

SENATOR LOUDEN: My next question is, is when...I have a problem with eminent domain for any agency and I have a problem with bonding NRDs, which we voted to do it but I still have a problem with it. When the Corps of Engineers was building dams out in the country where I live years and years ago, they built that dam at a certain level, certain elevation from sea level. And when they took the land, that land couldn't be above that sea level point that would be above the dam. In other words, they had to take what was within that sea level. If these NRDs, if you give them eminent domain on that and they want to build dams, should they be under the same guidelines, that they can't take any more land than what the level of that dam would cover with water? [LR94]

JOHN FULLENKAMP: You know, I honestly don't know...I honestly don't know that I can answer that for you, because I think if you look out the window and you would draw a line right around the water's edge, probably, and you wouldn't have the facility that's here. I think there is a by-product to the reservoir and the by-product is that we have Wehrspann and Zorinsky and Cunningham that are beautiful facilities. But if the mission and everybody's wisdom is it's flood control and it's a certain elevation, you know...

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[LR94]

SENATOR LOUDEN: Okay. That's what I'm getting at. The question is, are we talking about flood control or are we talking about recreational along with your flood control and how much money are we going to spend for each one of them? That's... [LR94]

JOHN FULLENKAMP: I agree. My own personal opinion, if you're interested in, is that there could be a reasonable by-product because you're spending so much money to get that facility, without spending too much more you can get the kind of facility that you've got out your window here. [LR94]

SENATOR LOUDEN: Okay. Thank you. Other questions? [LR94]

JOHN FULLENKAMP: Thank you very much. [LR94]

SENATOR LOUDEN: Seeing none, thank you. Next testifier? Has everyone filled out the green sheet before they testified? The clerk needs to know whether she's getting her green sheets. [LR94]

JOHN WINKLER: (Exhibit 5) Good afternoon, Senator Louden and members of the Natural Resources and Urban Affairs Committee. Senator Louden, it's a little different position for me. I'm usually sitting on that side of the table at meetings. (Laughter) You've got my spot over there. My name is John Winkler, J-o-h-n W-i-n-k-l-e-r, and I am the general manager of the Papio-Missouri River Natural Resources District. I want to thank you for the opportunity to testify as part of LR94. As many of you witnessed this morning, the Papio Watershed continues to experience the conversion of farmland into urban concrete and rooftops at a rate of over three square miles per year. As you heard, it's projected by the city of Omaha planning department and the Bureau of Business Research that the watershed within Douglas County will be fully developed by 2025 and the entire watershed will be completely urbanized in 30 to 50 years. You also heard

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testimony outlining compliance with federal water quality mandates and the expansion of the flood plain and flooding dangers throughout the watershed that this rapid urbanization has created. In addition, you heard testimony from Mark Wayne as a member of the Papillion Creek Watershed Partnership, in which the Papio NRD is a member along with eight cities and two counties, that was formed seven years ago to proactively and cooperatively address the challenges of storm water management and flood control throughout the entire watershed. The Papio-Missouri River NRD, as a member of the partnership, believes there will not be significant state or federal dollars available to address these water quality mandates and flooding issues. As evidenced by early testimony, most cities and counties within the partnership, although possible, would be hard-pressed to generate the revenue necessary to fund storm water management solutions by themselves. Furthermore, pay-as-you-go funding will not keep pace with the development pressure and the need to implement flood prevention and water quality improvements. Flooding and water quality are both a public and private concern and everyone needs to be responsible, especially when it comes to public safety. The Papio-Missouri River NRD has technical experience and the regional authority to bridge jurisdictions and to implement and maintain a comprehensive watershed management plan. And when I speak of a comprehensive water management plan, we are talking about LID techniques, possibly detention facilities, water quality basins, flood plain buyout programs, channel improvements with the levies. We want a full host, a comprehensive holistic approach. All solutions, both structural and nonstructural, are needed. However, a significant capital investment will be required to implement them. Even immediate needs within the next two or three years will require a method of long-term financing. We are not requesting state appropriations or asking for additional tax levying authority. We are willing to work within the NRD's 4.5 cent statutory...our obligated taxing authority to work within that levy. All we are asking for, and I know Senator Friend might like this, is the tools necessary (laughter) to allow the flexibility in funding a comprehensive approach to watershed management. I didn't use toolbox, just tool. (Laughter) [LR94]

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SENATOR FRIEND: That's a nice enhancement. I liked it. [LR94]

JOHN WINKLER: In fact, the U.S. Environmental Protection Agency recommends that storm water management is best addressed by a holistic watershed-based approach. Therefore, the Papio-Missouri River NRD, as a partner with the eight cities and two counties, seeks the ability to assume a greater proactive role in storm water and watershed management so that past problems are not repeated and future solutions are implemented appropriately. Bonding authority for the Papio-Missouri River NRD provides the Papio Watershed with a vital tool to implement storm water best management practices and to fill one of the NRD's basic statutory objectives of flood control and projection. And I think Marty alluded to the mission statement and the missions that the statutes give to the NRDs for flood prevention and flood control. Once again, the watershed is projected to be at full build-out in 30 to 50 years. We have a small window of opportunity to act and I think that is the sense of urgency that we need to present, that we do have a small window of opportunity to act. I want to thank Senator Louden and Senator Friend, the Chairmen of their respective committees, for allowing me to testify and I'd be glad to take any questions that you might have. [LR94]

SENATOR LOUDEN: Questions for Mr. Winkler? Senator Fischer. [LR94]

SENATOR FISCHER: Thank you, Mr. Winkler, for hosting us today. [LR94]

JOHN WINKLER: Thank you, appreciate it. [LR94]

SENATOR FISCHER: It's been a real pleasure. My legislative district, I happen to have parts of seven NRDs within my legislative district and I'm a strong supporter of NRDs because I believe you have local elected boards that are giving direct input from constituents. I think that's very wise that Nebraska has those set up. But I have some questions for you. [LR94]

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JOHN WINKLER: Sure. [LR94]

SENATOR FISCHER: You talk about the immediate needs within the next two or three years that are going to be required. Can you tell me what some of those needs are? [LR94]

JOHN WINKLER: Yeah. We've...well, just the development pressure and some of the reservoir sites that were identified as possible locations are already being platted and there's already development interest in the area. With that, as those developments occur, we've been working with our partners, with the cities and the counties, and they've identified these sites for the developer, realizing that it could be a potential site. I think right around \$80 million to \$81 million of projects have been identified over the next probably three to five years as a possibility, and those are estimates. But again, as the watershed continues to develop, these developments are running up against potential project sites and that's when I speak of that we have needs already. It's already occurring and rapidly, especially in south Sarpy and obviously as you've seen in western Douglas. [LR94]

SENATOR FISCHER: Can you refresh my memory and tell me of how much an NRD can levy right now? [LR94]

JOHN WINKLER: Right now, we have statutory authority for 4.5 cents. [LR94]

SENATOR FISCHER: And where are you? [LR94]

JOHN WINKLER: We're at .038. [LR94]

SENATOR FISCHER: If you went to your 4.5, how much revenue would that bring in? [LR94]

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JOHN WINKLER: Each one cent of property tax that we levy generates about \$4 million a year. [LR94]

SENATOR FISCHER: If you would...okay, each cent is at \$4 million. If you would work with your partners then and they...I don't know where each of the cities and counties are at their levies in this area. But if they would go to the top there to reach their lid, do you have any idea if it would be possible to reach that \$80 million in five years? [LR94]

JOHN WINKLER: I severely doubt it. The ability to take on that debt and be able to finance that over a significant period of time is crucial. I don't know exactly where our partners are with their levies, but I know they're pretty maxed out. Just from the testimony from Omaha, they're looking at a \$1.5 billion bill, you know, down the road here. [LR94]

SENATOR FISCHER: But I also believe Omaha's county levy right now is like 26 or 29 cents and they can go up close to 50. [LR94]

JOHN WINKLER: Again, I don't know their exact figures. [LR94]

SENATOR FISCHER: I'm not sure on that, but I think I'm fairly close. So you don't feel that the pay-as-you-go is going to finance this? [LR94]

JOHN WINKLER: No. [LR94]

SENATOR FISCHER: When you talk about the cost, that \$80 million over the next five years, obviously in your plan you have looked at a variety of needs, tools (laughter) that will be used and that's how you're reaching that. [LR94]

JOHN WINKLER: Correct. Again, the plan is still in a flux with, obviously, the studies that continue to be completed by...and HDR addressed those, the stage IV. So again,

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we don't know the exact number. But I think, and I can strongly believe that whatever the final plan is, it's going to take a significant capital investment and to have the ability to... [LR94]

SENATOR FISCHER: Are you looking then for the Legislature to grant just your NRD district bonding authority similar to the authority that was granted the three NRDs in the Republican Basin? [LR94]

JOHN WINKLER: Yes. We are just looking for this particular NRD, the Pappio-Missouri River NRD and we are asking for just the ability to bond and to stay within our current levy limit and no additional authority. [LR94]

SENATOR FISCHER: Okay. The ability to bond without a vote of the people. [LR94]

JOHN WINKLER: Correct. [LR94]

SENATOR FISCHER: Thank you. [LR94]

SENATOR LOUDEN: Questions? Senator Carlson. [LR94]

SENATOR CARLSON: Senator Louden. Mr. Winkler, I'm going to ask a question here because I've got a hang-up with the whole taxing idea, and it isn't necessarily aimed at the NRDs. But part of the appeal of an NRD having this taxing authority, it's a common levy across the board... [LR94]

JOHN WINKLER: Correct. [LR94]

SENATOR CARLSON: ...still based on value. So you have a...where I get stumbling with this, in the metropolitan area you have a high-value business on property with a high income and this particular business has done nothing in the way of the LID work to

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help with the problem. Then you got a farmer that's got high value, limited income off that value, and has really followed good conservation practices and spent money to get his farm in that condition. So you're asking for authority to bond and levy tax, and assuming the values are the same, they're going both going to pay the same. Now I could turn it around and say we've got a farmer that doesn't pay any attention, pumps all kinds of water and doesn't do any kind of conservation, and got a business that's going the other way. But I've got a farm background. (Laughter) So that kind of thing bothers me. Is there a way to deal with that? [LR94]

JOHN WINKLER: I don't know. I think every taxing authority, I guess, struggles with that. You know, the whole fairness of property taxes is a question that I'm not capable of answering as far as what's fair and what's not. And I think everyone agrees and I'm sure you hear it more than we do, that, you know, property taxes in this state are out of control. That's...in this state, how our revenue is set up is that's about the only way we can bring it in. Now we've also...and John Fullenkamp, trying to work with the development community to generate that additional revenue through the building permits to help pay for this. And you're going to pay that on a lot if it's near a body of water or if you're in midtown Omaha and you're developing a lot. You're going to pay that fee to help fund the storm water management plan. But the whole thing of fairness of property...I am not capable of answering it. And maybe if I will someday, then I would be glad to share the answer. But I don't know how to justify that or how to fix that. That's my frank answer. [LR94]

SENATOR CARLSON: Well, the fee...or not the fee, the taxing authority ends up being based on value. [LR94]

JOHN WINKLER: And that's correct across the board. [LR94]

SENATOR CARLSON: And it's not a fee, which is share and share alike, which some of us would like to see. But that's not fair for everybody. [LR94]

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JOHN WINKLER: Right. And I think that's where the balance that we try to come in with the development community, they're going to pay a fee and pay a portion of that and then obviously the rest would fall on the valuation of the property taxes. And that, I think, that's the only way we have the ability to do right now. [LR94]

SENATOR CARLSON: Thank you. [LR94]

SENATOR LOUDEN: Senator Christensen. [LR94]

SENATOR CHRISTENSEN: Thank you. Do you do any income...I thought ag land could be developed or be based upon a lower value than the city. Is that (inaudible)? [LR94]

JOHN WINKLER: And again, that's the assessor makes that determination. We just take their figures and then, like any city or county, our tax take is based off the assessor's valuations. So they would handle that as far as what those particular percentages would be. We don't have control over that. [LR94]

SENATOR CHRISTENSEN: I guess my other question is, if this can generated through the city, why do you want your name on it? [LR94]

JOHN WINKLER: I think...you know, this partnership was formed. And just in fact that this partnership exists is something. I don't know if anyone has ever tried to get nine cities or eight cities and two counties and another jurisdiction together to work on anything, let alone agree on anything. And the Papio-Missouri, we have a responsibility, statutory responsibility and we think we have a responsibility to our constituents throughout the district to be a player, to be a partner with these communities. And everything we hear from the EPA on down, regional cooperation is the way to go. It makes sense. We cross all jurisdictional boundaries and we have the authorities to do a lot of different things that the cities do not. And it just appears to make sense that we

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would be the lead agency and that we want to be a good partner because we are a member of this watershed, if we like it or not. And I hate to use the we're all in the same boat type of deal, but we are. And so I think that's why the NRD wants to have this ability, needs to have this ability to take the lead and to make sure this is done correctly. And also as these facilities are built, no matter how many there are, somebody is going to have to take responsibility of operating and maintaining them for a perpetual period of time. And do we rely on eight cities and will they have the same standards, will they do the same inspections? The NRD has a very strict inspection criteria process that we go through every year to guarantee that our facilities meet the highest standards possible. And I would want to have that control to make sure that our communities and our citizens are safe. [LR94]

SENATOR FISCHER: Good answer. [LR94]

SENATOR LOUDEN: Questions? I have some, John. Again, I want to thank you for the hospitality we've received today and the tour we had of the area. [LR94]

JOHN WINKLER: You're welcome. [LR94]

SENATOR LOUDEN: But that doesn't have anything to do with the question. (Laughter) You know what the valuation of Douglas County is? [LR94]

JOHN WINKLER: No. I know the NRD's total valuation throughout our entire district is \$44 billion. [LR94]

SENATOR LOUDEN: Now the Douglas County would be...you mentioned if you raised it one cent, you would get... [LR94]

JOHN WINKLER: We would generate about \$4 million, that's districtwide. [LR94]

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SENATOR LOUDEN: ...\$4 million. Now if the county went out here, and I have a little bit of a problem with this counties and the taxing, even clear down to how your taxes is for your school district out here. Because out where I live, we're at the lid all the way. Sheridan County, where I'm from, is at 50 cents. I mean, we don't have any more slack. Box Butte County is about 47, some of them smaller rural counties there, they're at the top. And then I come down here and you have Omaha School District down here at, what, 23 or 28 or something like that, and you have a county that's 28 or so. Now having said all of that to warn you, if Douglas County raised their levy one cent, Douglas County, that would include...I mean, that would take you off the hook because that would...you would still, the people in your district would be paying that one cent. [LR94]

JOHN WINKLER: They would pay it. [LR94]

SENATOR LOUDEN: Yeah. [LR94]

JOHN WINKLER: But Douglas County would be collecting it. [LR94]

SENATOR LOUDEN: Because if you raise one cent in Douglas County, then there would be somebody that would be paying 2 cents. But anyway, 1 cent. How much money would that raise and would that be enough money to take care of what you plan here? Nobody has said how much money you need every year to get this thing rolling, that I've noticed. [LR94]

JOHN WINKLER: Well, if Douglas County...it would be...I mean, we raise it districtwide, which covers Douglas, Sarpy, Washington, parts of Burt, Thurston, and Dakota Counties. So we encompass. Now if Douglas County were to raise theirs a cent and we left Douglas County out of the mix, then, I mean, it would just be a matter of...they would generate the same revenue, except Douglas County would collect it and we didn't. So I think that's the idea, too, was we have the ability to take the one cent across the entire district. If each jurisdiction collected one cent and then transferred it to the NRD as a

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lead agency, it would be a simple everybody is paying one more cent on their property taxes and it would just be a simple transfer of funds. So it wouldn't matter, I think, to the taxpayer. They're still paying. And it wouldn't matter who collected, they're still paying. [LR94]

SENATOR LOUDEN: You still think then you would only be able to raise it \$4 million a year? [LR94]

JOHN WINKLER: Currently, and I say (inaudible) because we would have an additional cent if we could go up to our 4.5 cents. Currently, we are collecting one cent for planning and design and for flood control projects. So if we were given bonding authority, we would take that one cent we're collecting now, add it to whatever we could go up to, the 4.5, and then we could finance the bonds that way. We've worked very closely with bond counsel and with the developers or with the permit fees that would be collected by the cities through the building permits, and what we can generate alone through the district, we could fund a significant amount of debt over a 30-year period. And we've already...we've ran those numbers and we can present those to you. But we don't know specifically what that is, so we're guessing. We're saying worst-case scenario, could we finance it? And yes, we can, under the current authority. [LR94]

SENATOR LOUDEN: Now if you had bonding authority, then you wouldn't be able to bond any more than what your tax levy would pay for. [LR94]

JOHN WINKLER: And that's correct. [LR94]

SENATOR LOUDEN: So then in another year or so, would you be coming and asking us to raise your tax levy then? [LR94]

JOHN WINKLER: That's not the intent. And that gives you the control. We basically have put a leash on ourselves and saying we know bonding...we know property taxes

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are sensitive and we know that this is, if we can get this authority then we can go out and incur long-term debt. But we're not asking for more. We're asking, this is what the maximum we could collect anyway, if we had bonding authority or not. But it's the ability take on long-term debt and finance that over a period of years when obviously interest rates are at historic lows, money...money isn't cheap, but historically interest rates are low and money is a lot more economical to get than maybe five years from now or ten years from now when interest rates may be... [LR94]

SENATOR LOUDEN: Who was saying a while ago something about they bond and pay for it, they don't bond for any more than two years at a time? Where was that testimony here today? Somebody had something... [LR94]

MARTY GRATE: That was involving revenue bonds for our CSO program. [LR94]

SENATOR LOUDEN: Okay. [LR94]

JOHN WINKLER: So we basically have put brakes on ourselves. We cannot spend more...we cannot bond more than we can support through our tax levy. So we're not asking for 3 more cents or 4 more cents on top of the 4.5. We're saying we want to be...we're restraining ourselves. We just want the ability to finance long-term debt. And if we wanted to, we'd have to come back and it'd be up to you, as the Legislature, to say no, you guys have enough, we're not going to give you any more authority. And that would be up to whatever committee that went through if it wasn't this one. [LR94]

SENATOR LOUDEN: Now help me with this a little bit maybe. If you wanted \$40 million and you would have to have a 10-year bond because you're only going to raise \$4 million a year and you can't bond any more than what you can... [LR94]

JOHN WINKLER: And whatever the permit fees, whatever funding sources come through there, add on that. Actually we'd be...if we're 2 cents, we've got \$8 million, so

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we could bond \$80 million. [LR94]

SENATOR LOUDEN: But ten years from now, would that...I mean, what you would do now, would that...then that would mean you wouldn't be doing anything for the next ten years other than spending your bonding money. Is that what you want? [LR94]

JOHN WINKLER: That's what we're requesting. We think that we can efficiently and effectively do it with just the authority. [LR94]

SENATOR LOUDEN: Okay. Thank you. Other questions for John? Seeing none, thank you. [LR94]

JOHN WINKLER: Thank you. [LR94]

PAM DALY: (Exhibits 6 and 7) Hello, Chairman Louden and members of the committee. My name is Pam Daly, P-a-m D-a-l-y. I'm a citizen of Washington County and I came here today to oppose the bonding authority for the NRD. I had a whole outline plan to talk about conservation design as another key method of preventing, preventing storm water runoff. It works hand in hand with LID methods, which mitigates, mitigates storm water runoff. The two of those methods together are described in the handout that I gave you and have been used very effectively around the country in places where flood control was an issue. They did not have to take any land by eminent domain. They simply changed their zoning ordinances to include mandated conservation design and low impact development storm water management techniques. This is done. This has been done in Douglas County. And I haven't heard anyone say that yet. But you know, that changes dramatically the runoff levels, peak flows, and everything else within Douglas County. Washington County is very likely to pass that kind of a change in our requirements for developers over the next year. Now we spent \$800,000, or the NRD did, on a study that said after full build-out development in 40 years, you're going to have this much flooding. This is a totally invalid study because the independent variable

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that they used was traditional cookie-cutter developments going throughout Douglas and going up through Washington County. That, in fact, is not going to happen. So they started off with the wrong premise and spent all this taxpayer money on coming up with designs for storm water management with their big reservoirs that are based on traditional cookie-cutter full build-out development that's not going to happen. Now to be fair, the HDR attorney did come and sit here and say now we're going to do another study, we realize that was wrong, we're going to bring in a Chicago company, they know all about this and they're going to do another study based on varying degrees of LID, low impact development kinds of developments being built out. At what point will they sit down and talk to the county boards and say what is it, what kind of development are you planning, and we'll use that in our study. They aren't using that. They're just kind of guessing. Well, they might do this much development, they might do this much LID. For this study to be valid, and it's crucial that this study is valid because you're taking away people's livelihoods, you're talking away the basic thing that this state stands for and that's agriculture. Some of the richest soil in the state that does not require irrigation. So why all this rush? Haven't we got the cart before the horse here, talking about money, talking about how we're going to pay for it? We don't even know if it's needed or what is needed. And the attorney sat here and admitted that today. So please consider as you look the decisions that there is going to be a different future in 10, 20, 30 years than what they've assumed in their study so far. Because not only have they not considered the kind of development that's going to happen out there, climate change, that really affects ground water and ground flow and surface waters and everything else. And we're expected to...okay, I'm almost done. I'm sorry. Okay, there are other variables, gas, people aren't living so far out. Even as one guy said, and they want to live in closer. The developer, no less. (Laugh) Why are we letting what developers have done to this area to cause flooding not go regulated? He sits there and says the NPDES, NDEQ come out with their permits and they put in all their silt screens. Trust me. (Laugh) I've worked very hard on this in our county and the developers do not do what they are required to do for their NPDES permit. And worse, the NDEQ does not enforce them. So my point here is that we should not be letting developers determine what happens in

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our country and in our state and in our counties because they're the ones that are actually...they've caused the problem and they're the ones that are going to continue causing the problems. They caused the problems that everyone is saying let's put in reservoirs now because there's too much development runoff. But let's put developments around the reservoirs. Is that an oxymoron? It is to me. If you're going to put in reservoirs, ban all development around them because at Cunningham Lake it was the development that caused the damage in that lake, the sediment from engineers who did not put in the best kind of drainage (inaudible) and that was in our paper. So anyway, thank you very much. Any questions? [LR94]

SENATOR LOUDEN: Questions for Ms. Daly? I have one. Is there a lot of development going on in Washington County? [LR94]

PAM DALY: In the southeastern part. Right now the zoning for the southwestern part, which is the Papio Valley, is that they cannot have...they are supposed to have ten-acre lots. Developers thus do not want to build there because they can't put enough lots in to make money. [LR94]

SENATOR LOUDEN: Who has control of that, your county board, or who... [LR94]

PAM DALY: County board. [LR94]

SENATOR LOUDEN: Okay. Are they doing their job? Are they making the developers pay for some of their... [LR94]

PAM DALY: They're working right now on developing policies that will really begin to hold developers accountable for the best storm water management practices. [LR94]

SENATOR LOUDEN: Have they done that in the past? [LR94]

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PAM DALY: Have they done what? Made those policies in the past? [LR94]

SENATOR LOUDEN: Yeah, had those policies in place so that development in the past had to have some type of water retention. [LR94]

PAM DALY: They actually have a very strong storm water policy right now, that a developer cannot have no more runoff postdevelopment than was predevelopment. They're changing that now to be one of the most stringent in the country, which is postdevelopment runoff must not only be less than predevelopment runoff or the same as predevelopment runoff, it actually has to equal the runoff you would get from a meadow that...a hayed meadow, which of course is one of the best things for... [LR94]

SENATOR LOUDEN: Do they have any plans to retrofit any of that area that wasn't done when they developed it several years ago or anything? [LR94]

PAM DALY: They are now talking about it, and we have meetings scheduled for public hearings on that. [LR94]

SENATOR LOUDEN: How are they going to fund that? [LR94]

PAM DALY: Retrofitting? Well, part of it of course is going to come from taxes, part of it is going to come from developers. [LR94]

SENATOR LOUDEN: But the county... [LR94]

PAM DALY: The thing in our county...I'm sorry, Chairman Louden. The thing in our county is we don't have near the number of developments that need retrofitting, especially in the Papio area where there are virtually none, as compared to Douglas County. So retrofitting will be an issue with some of the southeastern county developments. But there aren't many at all over in the southwestern part. [LR94]

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SENATOR LOUDEN: The county board intends to handle it in Washington County?
[LR94]

PAM DALY: Yes, they do. And they're very strongly against the dam so they're very motivated to fix a way that storm water...they're against flooding, too. (Laugh) We're all against flooding. But we want the most responsible approach, which means looking at your data, getting the right data, and making decisions that are the best for everyone.
[LR94]

SENATOR LOUDEN: Now you do...is there some flood control on the Papio up in that, in Washington County? There's dams according to the map and stuff. I'm not familiar with it, I've never travelled that. [LR94]

PAM DALY: Yeah. There's been quite a bit of work done on that. And I'm not an expert on that. I think the next person... [LR94]

SENATOR LOUDEN: I guess my last question is, is Washington County or someone up there going to have to build some type of dams for flood control or something? [LR94]

PAM DALY: I don't think they're opposed to dams. They're opposed to having an outside agency come in and take away farmer's land without good data. And I think they would be very willing, and they've talked about having dry dams on farmers' lands for willing farmers. And some farmers would be very willing to have that. And even wet dams, it might be a wonderful opportunity for them to have side money with agritourism or cabins around the lake on their dams. But that's a whole different thing than having the NRD come in and say... [LR94]

SENATOR LOUDEN: Well, I understand that. Other questions for Ms. Daly? [LR94]

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PAM DALY: Thank you very much. [LR94]

SENATOR LOUDEN: Thank you for testifying. [LR94]

SELMA KESSLER: (Exhibits 8 and 9) Okay. I have to apologize in advance. I'm losing my voice, so bear with me. My name is Selma Kessler. I'm a registered professional engineer in the state of Nebraska. I'm also a certified flood plain manager and my background is in flood plain management. I've worked in that area for over...about 20 years now. One of the things I want to point out is the need to combine both low impact development practices with structural alternatives such as the reservoirs. You have in front of you a map that shows the current flood plain based on the work that HDR has done with the NRD. And that illustrates the extent of flooding that would occur for conditions as they exist today. There's also another boundary on there that represents the conditions that the city of Omaha and NRD had been following prior to the new mapping. So clearly there's a huge impact by just additional data, it makes a huge difference. And while low impact development is great practice, it's targeted towards the water quality storms. It will do a great deal for improving the water quality. But it cannot detain a 100-year event. And what I'm going to talk about is strictly the 100-year event, and that is a large...that's a large flood, but they do happen. And the other piece of information that you have is a list of structures that cross just the West Papio Creek and there's a number on there that refers to how much water, the depth of water over that, either the structure or the adjacent roadway to the structure or the rail. And you can see that it's not just property owners that are impacted. It's going to be the state, it's going to be the county, it's going to be the Union Pacific Railroad. Everyone is going to have to pay if a flood event occurs and it's got to be...I really feel that a combination of methods has got to be applied. And I'm sorry I'm keeping my commentary so brief, but if you have questions, please ask. [LR94]

SENATOR LOUDEN: Questions? Did you turn in a written... [LR94]

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SELMA KESSLER: I did not. I do not have written testimony. [LR94]

SENATOR LOUDEN: But can you? [LR94]

SELMA KESSLER: I would. Yes, I will. [LR94]

SENATOR LOUDEN: Okay. I'd appreciate that if you would, please. Thank you. Senator Fischer. [LR94]

SENATOR FISCHER: Thank you, Ms. Kessler. Are you then supportive of the holistic approach on looking at what's needed in this area? You're not anti-reservoir in any way? [LR94]

SELMA KESSLER: No, I'm not anti-reservoir at all. [LR94]

SENATOR FISCHER: Are you in favor of giving the NRDs bonding authority? [LR94]

SELMA KESSLER: Yes, I personally am. [LR94]

SENATOR FISCHER: Thank you. [LR94]

SENATOR LOUDEN: Other questions? Seeing none, thank you for testifying. [LR94]

SELMA KESSLER: I didn't mean to scare everyone, I'm sorry. Thank you. [LR94]

JERRY SLUSKY: Mr. Chairman, Senators, My name is Jerry, J-e-r-r-y, Slusky, S-l-u-s-k-y; I'm working with Selma Kessler and I, thank goodness, today do have my voice. Selma and I have been working on behalf of the property owners that are shown in the blue here at 144th, between F and L. At market value there's about \$200 million worth of property down there. And all of that, and I emphasize all of that, property in the

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last ten to fifteen years that's been developed has been developed by following the rules. And some of those are the LID practices and some of those are on-site detention, and some of those are using pipe to take water away and put it into the West Papio. As Selma mentioned, the West Papio, the narrow hash mark following the creek, was the flood plain line when 200\$ million worth of development went in there. And now with the new studies--the HDR revised map, that just came out and has not been adopted yet--says that all of the light blue now is in the 100-year flood plain. And simply what that means is that people like Ted Grace, who developed the Altech Business Park on the north side of F Street at 144th, spent about an extra \$1 million or \$1.5 million just improving the creek behind him, and raising his land up to get it out of the flood plain. Lo and behold, that project has been in about five or six years, and now he finds after building about ten or twelve, fifteen buildings in there that he's back in the flood plain. So he was a foot above, and now he's almost a foot below. And that's true of almost all these properties: Acura of Omaha, Superior Honda, the Mercedes Store, the shopping center in there, all the industrial buildings behind it, and all the industrial buildings on the other side of the Papio are all now in the flood plain. What does that mean? This means you had developers who played by the rules, who practiced LID practices, and yet they are being encouraged more so and more strongly now by the developing...by the Planning Department in Omaha and the communities around here...on-site detention etcetera. Charlie's on the Lake went to the extent of digging that lake out behind it as a flood control and a storm water detention area. We have a problem in this area, and I (inaudible) all the testimony and this is a tremendous exercise in democracy today here. But the truth is, what John Fullenkamp said is true, and we find this all the time when we're trying to do a zoning...we try to balance the interests of the neighbors or the developer. And in this case I think it makes sense, all the sense in the world, to balance the interests of what's going on here. We are going to have a major flood event here and in just this one little part of Omaha you're talking about putting water one foot on the first floor of every building in here with a 100-year flood event. Now what Selma couldn't say strongly enough, because we enlisted her and her company because they're experts in this, along with HDR, she looked at HDR's figures, numbers, analyses, and

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determined that they did a great job. So there's nothing defective about these numbers. But if you build a few dams, in particular 15 and 12 up north, you will improve this by about 8 inches on average. The rest of that is going to be...it's going to improve...it's not going to be a foot below, it'll be four inches water on the first floor. And at least you've taken 2/3 of the problem out of it by balancing the interests. Now maybe there are some other things you can do downstream here. I don't know if anybody is here from Bellevue or Papillion but you should be hearing from them because their problem is even greater than this problem. So the point is simply this: this is a balancing of interests. The NRD does need the bonding authority so we can get to work and do it now, as opposed to respond to a major event in this area. And I appreciate all the senators' patience today and understanding. And if you have any questions I'm happy to answer them. [LR94]

SENATOR LOUDEN: Questions for Mr. Slusky? Is this in Douglas County or is this... [LR94]

JERRY SLUSKY: Yes. 144th and L Street. [LR94]

SENATOR LOUDEN: And what's the price tag...you mentioned two dams up there, what 11 and...I forget what the other one...15 or 19. What's going to be the price tag on those dams? [LR94]

PAUL WOODWARD: \$35 to \$36 million. [LR94]

SENATOR LOUDEN: For the two of them? And what is the valuation of that property down there you're talking about? You said \$200 million, or is that just what the one guy spent? [LR94]

JERRY SLUSKY: No, that's...I tried to add up all the buildings there and take the market value of them. So it's about \$200 million for the area that's shaded in blue here. [LR94]

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SENATOR LOUDEN: Okay. And what kind of a mill levy would it be if those people with that valuation down there were assessed...how long would it take them to pay for those dams, or would one dam work, or do we need two? First of all, you're not curing anything. Because to me, what difference does it make if it's a foot of water or four inches of water? I mean it's wet and shot anyway. (Laughter) If you don't get it clear out, why... [LR94]

JERRY SLUSKY: I understand; that's a logical argument, Senator. But keep in mind this: if now future developments come and you practice these low impact development practices upstream and as Douglas County continues to develop west and north and into Washington County, then you further reduce the problem coming downstream. So it is a balancing act. And if we all do our part maybe you can get rid of that last four inches over time. I don't know. But it's a problem. [LR94]

SENATOR LOUDEN: Can you explain it again to me? How come when he built that he thought he was above the flood plain and now he isn't? What happened in there? [LR94]

JERRY SLUSKY: Very good question. [LR94]

SENATOR LOUDEN: Who screwed up? [LR94]

JERRY SLUSKY: I had...(Laughter) not me, that was an engineer. No, I'm kidding, engineers. (Laughter) Simply this, and this is what I learned and I've been reading on this but...if as the county moves west and north and you have development, and you heard it earlier: impervious structures get put in place. The more impervious parking lots, buildings, etcetera you build out here, the more runoff you have. So 15 years ago when they thought the flood plain was here...and now it's actually here. Because more water is coming downstream than before. That's the answer to that question. The engineers did their job at the time, based upon the flood maps that they had to work

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with. Now that they've been revised we've got a much more serious problem. [LR94]

SENATOR LOUDEN: Now is there some way or another...that something holding the water up on down stream there...is it getting flatter country or what? So that the water don't run on through faster. [LR94]

JERRY SLUSKY: I don't...that's really a Selma question...Selma, can you answer that? Do you mind if she comes back? [LR94]

SENATOR LOUDEN: No, I don't mind. She's got to get up here on the microphone. [LR94]

JERRY SLUSKY: Yes, sir. Come on, Selma. Get it real close there now. [LR94]

SELMA KESSLER: Okay. Your question dealt with is there something downstream that's actually backing the water up. No, there really isn't. You know, if you think about in the grand scale there's always a flood plain adjacent to rivers. They exist, they're just a natural occurrence. And essentially there's nothing downstream that's a problem, not to this extent. The mapping that the city has used historically to allow this development, they followed all the regulations that were in effect. They have flood plain management ordinances adopted and they adhere to them. So they have a tool provided by FEMA and apparently there was not enough information at the time to make this an accurate map. [LR94]

SENATOR LOUDEN: Now as I look at this map here the 1067, 1066, is that the elevation above sea level? [LR94]

SELMA KESSLER: Yeah, if they're above the wavy lines, yes. And there are two sets of wavy lines. [LR94]

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SENATOR LOUDEN: In other words you have a what, an eight foot drop from 148th street down to L street, or something like that? [LR94]

SELMA KESSLER: Roughly. [LR94]

SENATOR LOUDEN: Okay. As it drops down...and that isn't fast enough to take the water away, that's the reason it will back up out into here where you're... [LR94]

SELMA KESSLER: Correct. I mean, if you drive by the area and just look at it you can see the natural flood plain as it exists. But it's been filled. [LR94]

SENATOR LOUDEN: Okay. Thank you. [LR94]

SENATOR FRIEND: Thank you, Chairman. Hi, Selma. Sorry about your voice. [LR94]

SELMA KESSLER: Yeah, me too. [LR94]

SENATOR FRIEND: And I think more people wish I sounded like you. (Laughter) Especially my football team, here in about an hour. Hey, you understand it's hard for people and also even politicians to be sympathetic when you look at a map, like, not the one Mr. Slusky gave us, but...but other ones where you've got up in Washington County you've got three dam sites...excuse me, four that I'm looking at off the top. And then you go down to the north branch of the West Papillion Creek, that's dammed up at dam site 15A, then the West Papillion at dam site 12 and also down south at Lake Zorinsky and dam site 18, damming the Box Elder. It's hard for people to understand, and me included, and be sympathetic when we're damming stuff all over the place and these aren't even at capacity. I've been over to Zorinsky, I mean, that could take a lot more water. You know, I'm wondering: how can I be more sympathetic? Because we got them all over the place right now. When does it end? [LR94]

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SELMA KESSLER: Okay. And I'm not sure if you're aware...the... [LR94]

SENATOR FRIEND: Probably not. (Laugh) [LR94]

SELMA KESSLER: The dams...the dams in blue, those are proposed reservoirs. Those are not in place currently. [LR94]

SENATOR FRIEND: The ones... [LR94]

SELMA KESSLER: The ones highlighted in blue. (inaudible)...Are you looking at this map? [LR94]

SENATOR FRIEND: No, up in Washington County, you mean? No, I'm not looking at that map [LR94]

SELMA KESSLER: Okay. I don't show any map and I don't show any dams in Washington County, at least not the... [LR94]

SENATOR FRIEND: I guess...let me oversimplify it, probably. We have a bunch of dam sites right now, we've been doing it since I was 18 years old, I've lived here forever. I mean, I've ridden bikes around them, we've had fun on them. The bottom line is: we continue to do it and we keep hearing about the impending flood that's going to get us. When you do ride around Zorinsky and you see that it might not be at capacity, or you think that it might not be...you understand how the average citizen is going to be unsympathetic. I mean, they're going, we're damming these things and when is it going to be enough? That's the standard layman's question, you know what I mean? And I'm asking an engineer, is it ever enough? Is the flood plain going to change every 10, 20 years, where we can't deal with it again, and we're going to have to go out to the Box Elder West? We're going to have to go to the north branch of the West Papiio. We're going to have to keep going west until we handle this problem, when? [LR94]

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SELMA KESSLER: It's a long-term solution, it really is, it may be that the NRD or whoever doesn't build every single one of these structures, but I do know if you can reduce the flooding that would come down the West Papillion Creek, for example, if you can reduce it maybe 10 percent, you could take several of these properties out of the flood plain. They wouldn't have to worry about incurring damages. The other element that I want to remind you is often times people lose sight of...okay, there's a road that's lying, so what, people will drive through it. And most of the deaths associated with flooding occur from people trying to drive over these. And you don't think about that because it doesn't happen on, but you know, how do you balance that? A man on Coal Creek died during a flood because he was trying to close the window in his basement. And the NRD worked with the city of Omaha... [LR94]

SENATOR FRIEND: And Selma, I think the argument is...I mean, some of that stuff can happen whether you dam every... [LR94]

SELMA KESSLER: It sure can. [LR94]

SENATOR FRIEND: But, I mean, the practical piece of it, I think what I worry about is that there's a bunch of dams out here right now. They were built. And they were built with some taxing authority. So I mean, it's hard for the citizen to step back and go, look, we're building these dams and now you want even more authority to build dams that we're already building. [LR94]

SELMA KESSLER: Well, there aren't that many right now... [LR94]

SENATOR FRIEND: I mean, how was Zorinsky built? I guess that's the point. I mean, that was dammed up...I used to drive up and down F Street--really fast, by the way (laughter)...drag...before Zorinsky was there. You know, I mean, that was built with money, and the NRD didn't have any taxing authority back then. As a matter of fact it

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barely existed. I guess the concern by citizens is: empire building. I mean, they're following enough people with taxing authority, do they have to follow more, you know what I mean? [LR94]

SELMA KESSLER: I don't believe that the NRD is out to create an empire. (Laughter) I think what they face on a daily basis that the rest of us are not aware of are people that incur flood damage, people have to pay flood insurance, roads and bridges that have been damaged even by minor floods. They see that daily. The staff sees it regularly, all the time. It's what they do. So obviously the public isn't going to be aware of it, because, you know, you're going to go do your thing and I'm going to go do mine. I'm familiar with flooding because I've seen a lot of it. And I know it happens. And I know...you know, there's not one single solution. It's got to be a combined solution. Everyone has got to work together. [LR94]

SENATOR FRIEND: You better stop, it sounds like your voice really hurts. (Laughter) [LR94]

SELMA KESSLER: I know... [LR94]

SENATOR FRIEND: I'm sorry about that. [LR94]

SELMA KESSLER: And that's why I'm so upset. Because I'm very committed to this... [LR94]

SENATOR FRIEND: You don't sound upset, you sound fine. [LR94]

JERRY SLUSKY: I'll be her mouthpiece. (Laughter) [LR94]

SELMA KESSLER: Well, that's right. He was supposed to speak for me. (Laughter) It's got to be a cooperative effort. I'm really sorry about the voice thing. [LR94]

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JERRY SLUSKY: You did great, thank you. [LR94]

SENATOR LOUDEN: Any other questions? [LR94]

JERRY SLUSKY: May I add just one last thing, Senator? I would like to answer your question about eminent domain and taking it for private uses. If you'll recall, two summers ago, the U.S. Supreme Court ruled you cannot do that. And every agency I know of in the state of Nebraska and around the country, and all states are very sensitive to this same issue, you just can't do it today. They would have to prove that it's truly for a public purpose. [LR94]

SENATOR FISCHER: If I can respond to that, the Kelo case with the Supreme Court dealt with takings for economic development, it was limited at economic development. So that's why I specifically addressed the developers when I asked that question. [LR94]

JERRY SLUSKY: I believe that the same principle does apply when you do...they have to prove the total public purpose or substantial public purpose. [LR94]

SENATOR FISCHER: It is supposed to be for public purpose but the Supreme Court ruling determined that economic development was a public purpose, and that's why states are looking at eminent domain laws to deal with that specific issue. [LR94]

JERRY SLUSKY: But you know the split that went down in that Supreme Court case, that's a big... [LR94]

SENATOR FISCHER: It doesn't matter, it was a decision by the court. (Laugh) [LR94]

JERRY SLUSKY: That's right, that's right. Thank you. [LR94]

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SENATOR FISCHER: Thank you. [LR94]

JERRY SLUSKY: Anything else? [LR94]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony.
[LR94]

JERRY SLUSKY: Thank you very much. [LR94]

SHAWN MELOTZ: (Exhibit 11) Good afternoon. I'm glad I'm saying afternoon and not evening, I will have to say that. I've been waiting somewhat patiently. My name is Shawn Melotz, I reside at...it's S-h-a-w-n M-e-l-o-t-z. And I'm from Omaha. And I am somewhat of an affected landowner but I would like to express my concerns with the whole process of the LR74...or LR94, I apologize. But before I start I'd like to point out a few things that came up during this testimony that kind of caught my ear. And I'd like to respond to them. The 29 dams...it has been written, in policy 1 of the partnership, it gives the NRD the task to go out and build them, to go out and obtain bonding authority. The local jurisdictions have adopted these policies. I believe there was a question with regard to the 29 dams and it is in the policy, specifically stated. In fact, there's a map with the 29 dams on them (sic). So I feel that they are supporting exactly 29 dams. The other issue that I've heard is, we need to do this, you know, quickly, because of the full build-out. Well, some of the comments I heard was...so farmers know when they can sell their land for development. I'm here to say we're one of the farmers that don't want to sell our land to develop it. We want to continue to continue farming into the next generation. In fact, my son is at Ak-Sar-Ben right now with his cattle, getting ready to show them tomorrow, as part of our ag background. So it's important to me that we protect our farm and others in the area. I would like to thank Senator Louden and the Natural Resource and Urban Affairs Committee for allowing me to speak this afternoon. And I ask that the intent of LR94 be reviewed, as I believe the result of any study

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affiliated with the Papio NRD will be one-dimensional, and that will be to build dams and grant bonding authority. As a CPA I've been monitoring the financial activity of the NRD since July 2004, when the story first came out for their intentions to build dams. The one on our farm was one of them, so we became pretty deeply involved. And since that time this NRD has spent well over a million dollars in studies, lobbyists, and other means to justify building these dams under the guise of flood control. I served on a Steering Committee as a representative of the Papio Valley Preservation Association on one such study. I served under the pretense that its purpose was to look to alternatives to building the two large dams in Washington County. Unfortunately as the study progressed, the Steering Committee members learned that the scope of this study did not go beyond building dams. In 2004 there were ten dams, the estimated cost to build those was \$186 million in taxes and at risk were 7,600 acres of farmland under condemnation. Today, through the studies and through these different activities of the NRD, there are 43 dams proposed. It has increased in Washington County from two to fourteen. That with the 29 in Douglas County has evolved this thing into a monster. The estimated cost of this...just to build the dams is close to \$500 million. And we are now looking at risking 10,000 acres of farmland. Yet during this same period of time, construction in flood-prone areas has continued, while minimal, if any, regulations have been adopted to reduce runoff at its source. The developers are being allowed to build in the flood plain by building up the flood plain. So that they're not in the flood plain...we put seven feet of dirt next to the creek, then we're no longer in the flood plain. You put a seven-foot wall next to the creek, when the water comes it comes faster, not slower. So we're compounding the problem by some of the practices that are occurring in this county. I am not an engineer, but logically, if governmental agencies start now and over the next 33 years, which is the 2040 number year that we continue to hear. And integrate regulations that would protect our natural resources at no cost to the taxpayers, the overexaggerated threat of flooding would be eliminated. As the runoff from concretes and rooftops continue to compound, developers should be required to implement permanent measures, not just those measures that stop the runoff during development. I'm thinking permanent measures, to eliminate a future threat of flooding

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and to protect water quality. Taxpayers and landowners should not be required to pay for this disregard that's occurred over the last...I don't know how many years. Compare the cost of implementing new regulations to the cost of spending \$500 million, that does not include the cost to put recreation around the lakes, that does not include the new infrastructure that will be required around the lakes. I was told that it would cost one million per two-lane road for the roads. In Washington County they're proposing 133 miles. So that would add \$133 million to that project. And let's even look at the maintenance costs over the next 33 years. I don't know for sure what the cost to rehab Cunningham is, but we need to look at what that's going to be. Therefore another taxpayer-funded study to promote reckless spending of even more tax dollars is inappropriate, unless this study focuses on changing local regulations. Another side note I'd like to make is damn site 13, which is the one by Bennington...cost the taxpayers to put that in...it has 0.5 percent flood control. And from what I saw on a slide today, it is now an impaired reservoir. Which means it did not help water quality and it is not helping water quantity. Thank you. [LR94]

SENATOR LOUDEN: Questions for Shawn? When you talk about...you said there's going to be 43 dams...is what...? [LR94]

SHAWN MELOTZ: That's been one of the proposals we'd learned of within the last six months--29 that's on the Papillion Creek Watershed Partnership list and up to another 14 in Washington County to replace the two large dams. [LR94]

SENATOR LOUDEN: Now when you speak about dams that small...retention dams or ponds...or is that just everything? [LR94]

SHAWN MELOTZ: I think it's every piece, but as far as I'm concerned, I don't think it matters when you're putting at risk farmland. And people's property rights. [LR94]

SENATOR LOUDEN: And you're saying that this one over here by Bennington or

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something that that does little of any good for flood control? [LR94]

SHAWN MELOTZ: According to HDR statistics that we were provided in some of our studies. [LR94]

SENATOR LOUDEN: Why was that? Was that put on a small tributary that...not that much area, or do you know why? I mean, where... [LR94]

SHAWN MELOTZ: Well I have my suspicions but I probably better not comment on that in a public avenue. (Laugh) [LR94]

SENATOR LOUDEN: Okay. Any other questions then? [LR94]

SHAWN MELOTZ: Something else...this NRD has \$43 billion (sic) of properties...valuation in this district. They have budgeted \$10 million to spend on dams in this next fiscal year. Included in that budget is a \$4 million carry-over from prior years that was overbudgeted and not used. [LR94]

SENATOR LOUDEN: Senator Kopplin. [LR94]

SENATOR KOPPLIN: Yes. I just want to clarify one thing or have you clarify one thing. When you said there would be 14 more dams in Washington County, did you say that would be with the elimination of the big dams? [LR94]

SHAWN MELOTZ: Yes, the two big dams. That's the information we were provided. [LR94]

SENATOR KOPPLIN: Okay. All right, thank you. [LR94]

SENATOR LOUDEN: Other questions? Seeing none, thank you for testifying. Next

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testifier. [LR94]

DEAN EDSON: Chairman Louden and Chairman Friend and members of the joint committee, my name is Dean Edson, D-e-a-n E-d-s-o-n. And I'm the executive director for the Nebraska Association of Resource Districts. I'll be short, sweet, and try to answer, probably, some of your questions that you may have had that maybe some others couldn't answer about the NRDs. We've got a unique situation with water problems in Nebraska: out west: not enough; in the east: sometimes too much. We got to deal with them. I noticed up here on the board behind you is Nebraska revised statutes 2-3229, that outlines the twelve responsibilities of the NRDs, their statutory responsibilities. And those were all put in place back in 1969 when the legislation was passed. The NRDs were created in 1972. Those have not changed since then. You look at this issue that we're looking at here today. You can go down that list of 12 and you can fit the storm water/flood control issue in about every one of those. What we're willing to do is offer the NRD, as a coordinating agency, we overlie all of the political subdivisions that have to deal with this issue. John Winkler outlined all of those, and the counties, the cities, etcetera. We're willing to help coordinate that. We're also willing to help finance these projects. And if you look at those statutes all of this fits in there. Now last year I was in front of this committee several times. And we had an issue we had to deal with with LB701. And that was to find a solution to our natural resource problems in the Republican River Basin. How did we get there? I'll tell you how we got there. Politically we delayed action on natural resource issues. And that's because people don't take it as a priority. It gets put on the back burner. I've been in front of this committee when I worked for other organizations, back in the 1990s, and sat in this chair and asked for a moratorium to be put on well-drilling in the state. And there was a whole line of people behind me telling me, we're not doing that. We got the Legislature to give authority back in 1996 to let the NRDs put on moratoriums. And we filled rooms with people opposing the NRDs doing that. The NRDs proposed to put the moratorium on the Republican River basin back in 1998 and we were stopped by state government and local opposition...not to put on those moratoriums. Then we wait until the lawsuit

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gets settled and now it's 2004 and now we're playing catch-up. And so we came to you last year after trying to figure out how we're going to solve these problems and we're finding out that the regulations that we imposed are not going to do it. They're not going to be enough. We're going to have to come up with something else. That's where we came up with the bonding issue for the Republican River Basin NRDs to lot and lease the surface water. But what we did was, we sat down with this committee and the interested parties and we created a solution to the problem that's not just unique to Nebraska, it's unique to the country. I don't know if you're aware that we're the only state in the nation, not only that has the NRDs, but created a statutory mechanism to deal with water solutions locally that involve bonding and leasing water. It also involved a very creative financing mechanism. And that was with the occupation tax. We also had the property tax, but we're trying to figure out some other way to finance this. We're in our first year of that; we're going to have a few bugs. We're going to need to come back to you and get them worked out, get them ironed out. But what we're really getting at here, why we've given you this background information is we can't sit around and wait and argue over this. There are good, valid arguments on all sides of this issue. But what we need to do is sit down and work this out, develop what we need to do statutorily for project-design or project authorities, figure out how you're going to finance it. And lay that out and figure out a way to finance it. If we want to do it through...without the bonds, then you may want to look at increasing the levy authority. That's not very appealing to a lot of people. But I think if we sit down and let cool heads prevail, we're going to be able to figure this out. The one last thing I want to say is that I found it very interesting, the individual that came up before me, he says that developers played by the rules, and now things have changed. And I think all of you that have been on the Natural Resources Committee have heard that from irrigators. We played by the rules and now it changed. Well, everything changes. We got to adopt to change and figure out the best solutions that will work for the state of Nebraska and the local people. And I'll be glad to answer any questions you might have. [LR94]

SENATOR LOUDEN: Questions for Dean? Senator Fischer. [LR94]

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SENATOR FISCHER: Thank you, Chairman Loudon. Always good to see you, Mr. Edson, thank you for being here. I see the correlation here that you so elegantly brought out about...that the NRDs are willing to step up and finance the projects. But you will have to admit that the financing...well, the NRDs may be the ones that are handling the financing of the project, really the financing of the project comes from the taxpayers within the basin. [LR94]

DEAN EDSON: That's correct. [LR94]

SENATOR FISCHER: Correct. I agree that water issues need to be dealt with locally in this state. And that solutions need to be found on a local level. In Nebraska it's my understanding that NRDs are responsible for ground water, the Department of Natural Resources is responsible for surface water, is that correct? [LR94]

DEAN EDSON: Surface water quantity management. The state is responsible for that, the DNR. [LR94]

SENATOR FISCHER: Would the DNR have any part in the planning process or looking for solutions in this case since...I guess in my opinion, there would be some kind of management done on surface water, depending on whatever solutions are used to control flooding in this area. [LR94]

DEAN EDSON: Yes. The department has a couple programs that could be utilized to help and assist with this. One of them is the Natural Resources Development Fund, which you could put the flood control structures or other structures in and help finance...and that would be a state source of revenue to go to to help match the local NRD funds. That would be one fund, for example. DEQ, on the other hand, has a lot to do with the surface water quality. And so that would be another agency that we would work with on those type of programs. And there may be some programs available

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through them. And as a matter of fact there is the grant program through storm water issues and financing. [LR94]

SENATOR FISCHER: Would those two state agencies that you mentioned...I guess I would assume that their input in this process would have to be followed? Because they would either be dealing with federal or state laws. [LR94]

DEAN EDSON: Yes, I mean the agencies we'd have to...primarily what the DEQ would have to follow that with the storm water issue and water quality, since that has been assigned to them. The development fund is a little bit different. There are some rules and regs with that, but that blends into this. And we would need to coordinate with them. Right now we're looking at the development fund and what the needs are for that fund as far as the backlog of projects all over the state. And we're working with the Department of Natural Resources to have them assist us with the review. And also incorporating the governor's office and the Appropriations Committee. [LR94]

SENATOR FISCHER: But in the end, under statute, the local NRD would be the final voice on the matter? [LR94]

DEAN EDSON: Well it would be dependent upon what the matter is. (Laughter) I mean if we were going to move forward and build a structure, an impoundment, and weave in the different agencies into that and then the locals... [LR94]

SENATOR FISCHER: If you're going to build a dam... [LR94]

DEAN EDSON: If we a build a dam... [LR94]

SENATOR FISCHER: Do you have to bring in...you don't have to bring in the Corps, do you? Or do you? [LR94]

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DEAN EDSON: Well it depends upon whether it's a Corps project or not. In some cases we do that. Zorinsky Lake, that was mentioned earlier, was a Corps project and not a NRD project. And that was done back in the mid-eighties, I believe. We have some projects where we partner with the federal agencies like the Corps and some projects where we don't partner with federal agencies, just state agencies. We do some things with the Game and Parks, for example. [LR94]

SENATOR FISCHER: If the NRD would do nothing...could that possibly be viewed as a dereliction of their statutory duties and would they therefore be liable, and could they be taken to court by any property-owners that would be flooded out downstream? You know, we saw the map that that flood plain has expanded. Would the NRD and then in effect, the taxpayers within this district be liable then to pay damages, because no action was taken to control that? [LR94]

DEAN EDSON: That's very possible. And what we're trying to avoid here...we don't want to be in that position. Like I said, our responsibilities are posted up on that board, and we want to make sure that we stay proactive and stay ahead of the curve. And not get into a situation where we jeopardize people's lives and property for failing to do a project that we should have done. [LR94]

SENATOR FISCHER: Could the...since this is a public hearing and it's been obvious to me that the NRDs have come forward and are very willing to take this responsibility on, if the state would not grant them that authority and there would be an incident in the future, would then the state also be liable for any damaged property in this flood plain that's been expanded? [LR94]

DEAN EDSON: That's a possibility. I don't think you can preclude anybody from suing. And you can't preclude anyone from suing anybody or any entity or being. [LR94]

SENATOR FISCHER: There's always those attorneys out there. Isn't there? (Laughter)

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[LR94]

DEAN EDSON: There are those attorneys, and then sometimes there's some non-attorneys. Be careful. (Laughter) [LR94]

SENATOR FISCHER: Okay. Thank you very much. [LR94]

DEAN EDSON: Okay. [LR94]

SENATOR LOUDEN: Other questions for Dean? Senator Carlson. [LR94]

SENATOR CARLSON: Senator Louden. And Mr. Edson, I missed your first comments, but Senator Fischer brings up an interesting point. Because you think in terms of surface water and ground water and we're talking about surface water today. Ground water pumping does not cause flooding. So is the reason the NRDs are so heavily involved is because the DNR has no taxing authority and can't be given bonding authority, but the NRDs can? That's the connection. [LR94]

DEAN EDSON: Okay. Well you were out when I first spoke, but if you look at the board behind you, there's the section of statute, it says 2-3229 and it lists out the 12 responsibilities of the NRDs that were put in statute in 1969. Now the districts weren't created until 1972, because there was a three year lag period there. But those have not changed. [LR94]

SENATOR CARLSON: Okay. Thank you. [LR94]

SENATOR LOUDEN: Senator Christensen. [LR94]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Mr. Edson, you'd make us all happy if you'd just move this water to the southwest corner of the state, solve two

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issues. (Laughter) [LR94]

DEAN EDSON: Yes, I'm working on a master plan. (Laughter) [LR94]

SENATOR CHRISTENSEN: Now I got to think what I was going to ask. (Laughter) Must not have been too important, I guess. (Laughter) [LR94]

SENATOR LOUDEN: Other questions for Dean? I would have a question, Dean. I would have a comment in defense of some of the Legislatures back in...when you said, when was it? 1969 when they had a chance to vote in some of this stuff and all that. And at the time they probably thought they were doing the best thing at the time. Because it's really easy to call the plays after it's happened. I mean we have a defensive coordinator that has learned that. (Laughter) And I think we have to remember that back then, you know, the outlook was different then on what water was and where we could get it and what could happen. And were there not circle pivots and a few other things like that came about into play. I remember, like I said, I've taken the World-Herald ever since I was probably 19 years old, which is a long time ago. And this used to be the biggest deal...was this Papio flood in Omaha. I mean this happened every spring, it washed down through there and cleaned the place out. Whether it was good or bad, at the time, I don't know. But that's what was happening. And of course over the years they've built these retention dams up here, and have some control. It either isn't raining as much or else they're working, because I haven't read it that much in the papers lately. But I'm sure where you're living down here along the river you're going to have, as one gentleman said, try to cut it from a foot to four inches on your floor. Well, a flood is a flood, you know. Any way, I would want to make that comment, that I'm sure the Legislatures back then were doing what they thought was right. Because most everybody tries to do what they think is right. [LR94]

DEAN EDSON: I agree with you. And everybody thought we were doing the right thing back then. What happened though was, after we did the right thing back in the middle

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1990s and the late 1990s and the early 2000s and after everybody agreed to that...when the chickens came home to roost, with the Republican River Basin settlement, then all of the sudden it became the NRDs' fault. Because the NRD didn't act proactively back in the 1990s. And back in the 1990s we didn't have the authority to do this. And so that's what I'm trying to get at here, is that we can do nothing or argue that we shouldn't build this project or that project... [LR94]

SENATOR LOUDEN: Now wait, we're not going to do nothing, because we've had testimony that the funding is available. [LR94]

DEAN EDSON: Right. [LR94]

SENATOR LOUDEN: The question is who is going to fund it and where. It isn't a question of whether something has to be done or whether the Legislature is going to allow anything to be done. The question is who is going to pay for it. [LR94]

DEAN EDSON: That's right. That's right. And that's the point I'm trying to make. I want to make sure that we keep moving forward and address these issues. [LR94]

SENATOR LOUDEN: Other questions for Dean? Senator Christensen. [LR94]

SENATOR CHRISTENSEN: I remembered the comment. I think the key point here is the same way as it was in the Republican. It is to make sure that we examine the issue very closely, to take up the least amount of farm ground, to use the least amount of damaging processes. You know, I think it's obvious a number of them don't want a lot of dams. They don't want somebody benefitting economically from that. They want to protect the land. You know, I think it's the best thing we can do is have people working together openly with no agendas, working towards getting the best practices. If that's LIDs, you know, using all them we can to do the least amount of dams and hopefully none. And work together and go forward to solve the problem that we have of the flood,

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but with the least amount of loss of land and construed mismanagement of economic development or things this way. [LR94]

DEAN EDSON: I would agree with you, Senator Christensen. We need to look at all of those things that have been laid out today. And not discount anything. [LR94]

SENATOR LOUDEN: Other questions for Dean? Seeing none, thank you for testifying. [LR94]

DEAN EDSON: Thank you, Senator. [LR94]

SENATOR LOUDEN: How many more testifiers do we have? [LR94]

DUANE WILCOX: I'm next, I believe. [LR94]

SENATOR LOUDEN: Okay. We got four or five. Okay. We'll start shutting them down to about 15 minutes or less. We've been doing pretty good but we want to get through here with everyone. [LR94]

DUANE WILCOX: (Exhibit 12) Good afternoon, Senators. You're receiving a handout that actually was an e-mail that I sent yesterday. I don't know if you've had time to read them, I know how it is with the e-mails. We get so many of them we can't hardly absorb them all. But any how, I would like to say one thing that's already been said here today. I think it's wonderful to have this hearing in front of both committees at one time. It's been a long afternoon, I'll try to keep my summary pretty short, primarily by just reading you my e-mail. [LR94]

SENATOR LOUDEN: Can you spell your name for the clerk please? [LR94]

DUANE WILCOX: W-i-l-c-o-x, first name D-u-a-n-e, Duane. [LR94]

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SENATOR LOUDEN: Duane Wilcox? [LR94]

DUANE WILCOX: Right. [LR94]

SENATOR LOUDEN: Okay. Thank you. Continue. [LR94]

DUANE WILCOX: I'll just read this to you really quick here. As I might say it I'm on the Washington County Board of Supervisors, this is my 17th year on there. And this one that I have in front of me was addressed to you, Senator Louden, and some of you may receive e-mails that say the wrong committee. Because I didn't separate them that way. I have them separated but the way you're lined up I couldn't quite do it. So you may have the wrong heading. As a Washington County Supervisor on the Douglas-Washington County Stormwater Management Committee, I feel our committee has made great strides in providing tools to improve water quality and reduce the threat of water quantity. To a large extent these tools are at no cost to the taxpayer. However, the Papio River NRD continues to promote LR94. LR94 promotes an interim study on the increased potential of flooding in the Papillion Creek Watershed and to review the use of bonding and other financial mechanisms. It would appear that this study is another attempt by the NRD to obtain bonding authority to build dams. After discussion on LR94, the Washington County Board of Supervisors--I didn't put the date, this was this past Tuesday--we request that the Natural Resources Committee and Urban Affairs Committee deny this study. And that's about as simple and short as I can give you. I tried to put down in an e-mail what I thought was sufficient, to not bore you with a lot of things. [LR94]

SENATOR LOUDEN: Questions for Commissioner Wilcox? [LR94]

DUANE WILCOX: I'd like to correct you and say supervisor. Thank you. [LR94]

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SENATOR LOUDEN: Senator Fischer. [LR94]

SENATOR FISCHER: Supervisor Wilcox... [LR94]

DUANE WILCOX: Thank you. (Laughter) [LR94]

SENATOR FISCHER: You must have townships in Washington County... [LR94]

DUANE WILCOX: Well we do have townships. We get called commissioners about as much as supervisors due to Douglas County being right next to us, and they are commissioner (inaudible). [LR94]

SENATOR FISCHER: I have 13 counties, and three have supervisors, the other ten have commissioners. But in your statement and in your letter you said that the county has made great strides in providing tools to improve water quality and reduce the threat of water quantity. Can you tell me what some of those tools are? [LR94]

DUANE WILCOX: Yes, I certainly can. Last fall Douglas and Washington County joined together to come up with a new storm water policy, although the NRD had headed one, we felt that maybe we had some things that could maybe a make it a little better. So we worked on it together. And it's the first time probably that Douglas and Washington County had ever worked on anything like that together. And it really worked quite well. We've had a lot of people on our committee; we've had a lot of input. And what I mean mainly by that is what we've heard a good share of the afternoon, is low impact development. That's the main thing. We feel if our plan is adopted and absolutely enforced, which it has to be--you can adopt anything, but if you don't enforce it, it's not worth the paper it's written on--so it does have to be enforced. Do we have quite a ways to go? Yes, I think we do. But I truthfully believe if this new plan is put into effect, and both counties--I don't like to speak for Douglas County, I'm not speaking for them--but we both feel pretty strongly that it's going to be adopted. I don't think there's a need for

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dams, particularly in Washington County. And I can't speak for the part of Douglas County here. [LR94]

SENATOR FISCHER: Okay. Thank you very much. [LR94]

DUANE WILCOX: Thank you. [LR94]

SENATOR LOUDEN: Senator Kopplin. [LR94]

SENATOR KOPPLIN: Yes. I don't have a question, but I want to respond to your e-mail. [LR94]

SENATOR KOPPLIN: Yes. [LR94]

SENATOR KOPPLIN: I instigated this study, not the NRD. I represent a piece of every community in Sarpy County. Bellevue and Papillion are greatly affected by flood control from the Papio. We've had deaths, we've had all kinds of things. The issue of should bonding authority be in my proposed study was because there was a bill asking for that. We need to look at that. It has nothing to do with the NRD asking this study to be done. It has nothing to do with whether I feel dams should be built or not. I don't know. That's the purpose of the study. But this is my study. It is not the NRD's and I think you have falsely accused of them of doing something they have not done. Thank you. [LR94]

DUANE WILCOX: Well I'm very sorry to have offended anybody, because there was no intentions of offending meant. I think where we're looking at, I have no problem on this study. But I think this study just leads on to other things. [LR94]

SENATOR KOPPLIN: It might. But that's for us to decide. [LR94]

DUANE WILCOX: And well, you have the opportunity to do it and I'm sorry to offend

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you. You have a big job to do. [LR94]

SENATOR LOUDEN: Other questions for...Senator Hudkins. [LR94]

SENATOR HUDKINS: Mr. Wilcox, you said in your testimony that you can pass all the rules and whatever else that you want but you have to enforce them. How would Washington County enforce whatever rules you set forth for LIDs? [LR94]

DUANE WILCOX: Well, one of the ways that we plan on enforcing it, probably as much as anything, we have just recently, and it's still...we have passed it in our County Board meeting. We have acquired an engineering firm to go over the drainage studies when they come to us. Instead of just sending them down here for Paul, which he's been very good to do to go over them. And also to make site visits. And this is the things (sic) that I believe have to be done to enforce anything. Because a planning administrator...we're a county of a little over 20,000. We have a planning administrator and he has one person for staff. And he's also in charge of the building inspector. It's pretty hard for that planning administrator, or the county board, for that matter, to go out and try to police all this stuff. So we realize that we're going to have to get more enforcement. And if we get this enacted, as I'm sure we will, it's going to be up to the developer to see that he has to have it maintained or he's not going to get another building permit. So I think part of it, I believe, can be self-enforcement. That if you don't follow the rules you're not going to get another building permit and in developments it doesn't take very long for them to want to change their ways. [LR94]

SENATOR HUDKINS: Let's say that you have a developer, that up to now he has done everything that he is supposed to do. And on this one particular instance he doesn't put the dirt shields or whatever else that they're supposed to do, does the County Board...or who has the authority to stop them? [LR94]

DUANE WILCOX: Right now the planning administrator probably has the authority. It

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would come through the County Board, but the planning administrator would actually be the one that would stop it. [LR94]

SENATOR HUDKINS: All right, thank you. [LR94]

DUANE WILCOX: You bet. [LR94]

SENATOR LOUDEN: Other questions? Senator Carlson. [LR94]

SENATOR CARLSON: Senator Louden. Mr. Wilcox, in having the idea, and I'm not arguing with it, that if new development was forced to use the LIDs...and I agree with you on enforcement. If they don't do it they don't get the next project. But there's got to be authority there to levy a penalty or whatever. But what about those that are already done that need to be corrected? [LR94]

DUANE WILCOX: Well that's kind of a tough question to answer. And I'm not going to take the fifth on it, by any means, I'm going to say that the ones that are already done--and I'm speaking strictly of only Washington County--we've had good control on them. And I think if we can get this enacted and the developer knows from day one what he has to do, I don't think we're going to have any more problems to speak of. Now will it eliminate it all? Probably not. But we'll work on it. I don't know if that answers your question. The retrofitting...I don't think we have very much retrofitting to do. And I'll use another example: my lord, my sake, I don't know how many hundreds and hundreds and hundreds of miles of terraces, push-up terraces we have in Washington County. That the NRD has been a great part (sic) in building, and I'm very thankful they have. But we don't have a big runoff of water that's causing a problem in Washington County. We don't have near the problem that we had 10, 15 years ago. Because everyone has kind of buckled down and realizes we have to try to do something. And by golly, I think they've done it. I'm proud of what they've done. I don't know whether that answers you or not. [LR94]

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SENATOR CARLSON: Okay. Thank you. [LR94]

SENATOR LOUDEN: Other questions? I have a question, first of all, supervisor Wilcox, as Senator Fischer said, she's got what, 13 counties and some are supervisors...I've got seven counties and they're all county commissioners out there. We don't have...a supervisor is a guy who looks after the weeds. (Laughter) [LR94]

DUANE WILCOX: Yeah, okay. I wish that's all I had to do. (Laughter) [LR94]

SENATOR LOUDEN: The next thing I guess I ask is when you mentioned that as your hammer, so to speak, to make sure these people comply, it looks to like that if you don't have them put up some kind of a performance bond or assurance bond or something, that... [LR94]

DUANE WILCOX: That would be part of it. [LR94]

SENATOR LOUDEN: We went through in Box Butte County, the city of Alliance, about, oh I suppose 20 years ago, and the place was booming. And we had developers come in from all over the world. And when the dust all settled Alliance owed \$13 million for some of the stuff that got done and didn't get paid for. And there weren't any performance bonds in place at the time, so this is my question: do you anticipate doing something like that? Because you got to have more than the fact that you're not going to get the job next time, because some of them guys don't care, they're not coming back anyway. [LR94]

DUANE WILCOX: Definitely. Definitely we will have...that will be part of it. [LR94]

SENATOR LOUDEN: Okay. Thank you. Any other questions? Seeing none, thank you for your testimony. [LR94]

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DUANE WILCOX: Thank you. And I'd like to apologize for (sic) you again, Senator Kopplin, I didn't mean to offend you or the NRDs. [LR94]

TYLER MOHR: My name is Tyler Mohr, T-y-l-e-r M-o-h-r. And I'd like to thank Chairman Loudon and his fellow Senators for the opportunity to address LR94. I'm a Douglas County farmer, and I agree with what Mr. Wilcox just said. And I wish that Senator Carlson and his colleagues could have had the opportunity, when they took the bus tour this morning, and come a little further out in the country and see...how for over the years area farmers have voluntarily reduced the amount of storm water runoff and soil loss through conservation projects and improved farming practices. Unfortunately, as ag land is developed in the Omaha area a developer will come in; he'll remove structures such as terraces that tax dollars have been cost here to build...he'll remove them. He'll develop the ground. And when he's all done there will be no controls whatsoever. It'll run off the rooftops and down the streets. In the past the Missouri River NRD has failed to require developers to control the increased runoff that they create. They refuse to recognize the risk uncontrolled development creates and the importance of stopping storm water where it falls. The Papio NRD has failed to protect the natural flood plain from development. We heard the lady, Selma, and the attorney speak about how their client had built in the flood plain and it was where it was supposed to be. And now it's, you know, a foot under of where the flood level is. But they didn't address the fact, when they take and fill in that part of the flood plain, what type of risk do they cause to those below them? You know, they're taking that much more away from the flood plain. I think there has to be...you know, if we had legislation or some type of enforcement where we could stop the building in the flood plain, and make all future development control their additional runoff, I think a lot of the problem would be solved. And I think the NRD really should have been working towards necessary regulatory changes to achieve that. The Papio NRD recently funded a \$600,000-plus study by HDR on dams. Many people, including myself, believe this study was flawed and lacked credibility. The Papio NRD's methods and motives have created a terrible atmosphere

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of mistrust in the public. I'm concerned about how much influence the Papio NRD and their development partners would have on any outcome of any such study. I would ask the Natural Resources Committee and the Urban Affairs Committee to take steps to ensure that this study be done honestly and independent of Papio-Missouri River NRD and the Papillion Creek Watershed Partnership. And I'd like to address...I am a taxpayer and I mean, the thing about the bonding authority, if you guys really know what...the NRD has been trying to get this bonding authority for several years. It's jumped from committee to committee. It was attached to a bill about the distribution of obscene material, and they continually...and I believe the bill was LB1113, or the attachment was...a couple years ago in the very last session in the fall session. And they've tried everything they could to get this bonding authority. And my concern is, when this all started, this bonding authority is meant for their partnerships with their developers. And as a taxpayer, I mean...I'm not totally opposed to bonding authority, but I don't want to see it misused. If you're going to get bonding authority it better be used for the right thing, instead of funneled into the pockets of real estate developers. And my fear is that is what will happen if steps aren't taken to ensure that it doesn't. [LR94]

SENATOR LOUDEN: Okay. Are you done? [LR94]

TYLER MOHR: Unless you have questions. [LR94]

SENATOR LOUDEN: Questions for Mr. Mohr? Yeah, if you take a breath, why you might...(laughter)...thank you for testifying. [LR94]

TYLER MOHR: Thank you very much. [LR94]

GARY LAMBERT: I'm Gary Lambert and I'm a resident, landowner where dam site 10 would be, which was, if you took, I think, a tour today, you would have seen the dam, it's on the north side of Highway 36 at Thomas Creek. And as I make any statement here I want you to keep in mind that I'm talking about Thomas Creek particularly, because I'm

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not in any way knowledgeable about the rest of the watershed problem that's out there.
[LR94]

SENATOR LOUDEN: Can you spell your name for the clerk, please? [LR94]

GARY LAMBERT: L-a-m-b-e-r-t, G-a-r-y for the first name. I bought the property...well first of all, I'd like to say that it's within the purview of the state Legislature to pass a law outlawing private-public partnerships. About 19 states have done it so far. The Supreme Court didn't say the states couldn't do anything about this. They said it was up to the states, it was the responsibility of the state government to pass laws against this. Now public-private partnerships, by the way, do not fall within the spirit of the Magna Carta or the English Common Law. It's an eastern thought and it was used extensively in Soviet Russia before the Berlin Wall went down. So what we got here, I think, is a foreign entity working it's way into the fabric of our society. And I think you should think deeply about this before you let it become part of your legacy for your progeny. These children that are growing up need a free society, not one where people come on land and take it away without any real negotiation, using the government as a front. Amen to that. In regards to the land there, on Thomas Creek, I have a personal knowledge. I was there since 1987. And when I got there it was farm ground. It had corn and beans on it, it's a hillside that goes down to the bottom. And I'm...about three or four acres of that land would be part of the water for that dam. I'm on the creek. I have part...my land goes right up the creek, in fact, crosses it somewhat. Now in developing that land I knew...I went out and seen (sic) the federal extension office and asked them about the topsoil. It was gone. The land was essentially being used with fertilizer, chemical fertilizer. And so I decided it wasn't really within my attitude on life to take and let it continue that way. And I took it out of production and put it into what would be grass. I used it for hay, it's in bromegrass. I didn't engage myself in any federal money. I built three dams on that land at my expense to protect the creek and the adjacent land. At the time that I bought that land, the water from the large swale going downhill where the dam would be crossed the neighbor's field, cut the beans or corn out of his field and dumped into Thomas

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Creek. I took it upon myself to take and dam it in three places down that hill so that the water could not cross that field where his beans or corn were at. Today that tall bromegrass pretty much captures all the water that's on my land. I have a pond on that land that will hold about two million gallons of water and I know how to measure the water to determine how much water I've captured. Because you can pump about 44,000 gallons in 24 hours with the pump I have into that pond, and it runs it up out about 2 inches. In two days you'll get two inches, so I figure I got about 80,000 gallons of water every 2 inches or 40,000 every 1 inch. Well all I have to do on a rain is look at how much it raises and I can figure out about how much water I've captured. So kind of know of that...and also went into...I got the original dam site study that was done by the Corps of Engineers when I bought the property and looked into what was in the ground. Because they did about 100 bores in that area to determine whether they wanted dam site 10. And in doing that I found out from the engineer who I spoke to personally--he's retired for years--but, I got all of the files from him that he had at the Corps of Engineers, and looked into what that land was all about. That property has a problem with getting water. You don't get the deep ground water, you get surface water. My well is 53 feet deep. My neighbor's well is 31 feet deep. My neighbor drinks the water and he's never gotten sick, nor has his children. I won't drink the water because it has a count in it of 25 for the nitrate. And I noticed that an HDR representative here talked about the federal standard being 10 times...that the water out in...maybe not Thomas Creek, I don't know where he...he didn't specify where he got his water sample. But he said it was ten times greater. On my land the water is 2.5 times greater than federal specification, which I think is 10 parts per million on nitrate, which another thing he didn't do, he didn't tell you what he's talking about. What kind of contamination? E. coli? There's not a human E. coli out there, there's animals that would produce waste product. And I don't see any problem with that, because we've been drinking the water. If you drink E. coli you'll get cholera or something else like that. When I put in my septic tank the city had to inspect that. The man came out and I said how far away from that pond can I be with my septic tank? And he said, you got to be at least 100 feet. Now that isn't a great distance, when you think about it, to have a septic tank. And I asked

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him, what happens if that water in that pond gets contaminated? And he said your fish will have cholera and you'll know it's contaminated, they're going to die. They haven't died yet. One of the maxims in the old pioneer days, when the pioneers came west was: that they had to know what water in Nebraska to drink and which water not to drink. And the maxim was: watch for the green, big bullfrogs. Because a bullfrog will sit on water that you can drink as a human, but he'll be dead if he drinks the wrong water. And you don't want to drink any water where a bullfrog doesn't exist. That was their rule. And that's what they went by in order to stay well. When I heard Senator Christensen here say something that is particularly bothersome to me...he's under the, I would say an illusion, maybe worse than that...that take the minimum of land, he said. I have 24 acres there. The state highway department came in and with their own plan on what they plan to do for widening 36, they took it upon themselves to say they were going to confiscate all of my property, all 24 acres, without any explanation on who is going to use it, where it's going to go. No answers, no roads to it...then, the explanation they gave was: they couldn't put a drive to it. But my neighbor to the west of me, he had his neighbor, according to the plan, forfeit land for his driveway. And the question then becomes: well if he can get a driveway from his neighbor, how come I can't get a driveway from that driveway over to my land? Because from 126th Street you could actually build a driveway across all of those properties. Now another interesting thing is the man that owns the land to the east of me, down the hill on 36 there, told me the other day that the state told him that they're not going to confiscate his land, and without any explanation of how he gets his driveway. I think that what we have are developers who aren't manly enough to come out and negotiate with landowners who have prime pieces of property that they'd like to have. And they're using water as a pretense to get whatever they want out of the state. I think they'd be much less vigorous in their efforts if the state passed this law that said they couldn't use eminent domain against the landowners such as myself. Another thing that came up today that I...I have a few things here that I wrote down that I'd like to cover...one is, they were talking about water quality. Supposedly the federal government has a mandate, that's how the meeting started out, on water quality. But nobody really said what kind of quality we're talking about. Is it the nitrates? Is it the

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E. coli? What is it? Well it has been written in the World-Herald that down on the Mississippi Delta, down at New Orleans, they have something they call blue algae. And it's been written in the World-Herald that this blue algae is killing, I think the shrimp beds so that they're losing their shrimp. So their answer was, the federal government's answer was that they needed to stop the farm chemicals from going down the rivers to the delta where it would create blue algae and kill the sea life there. The farm chemicals that cause that are on those creeks. And if you dam those then the information that I got from the previous talkers was, that somehow the dams are going to clean the water up. No, they'll put the blue algae in your back yard. Because instead of the pond becoming cleaner, it's going to just simply create...it's going to have the same chemicals, is what they're getting at the deal is. So I don't see anything more than the federal government saying if they want something cleaned up that they want to distribute it among the states. Maybe that's their mandate. The other thing that's interesting is that I just went in to see the extension office there, because I've never put my land in a CRP. I asked them, because they sent me out a little flier, I said, do I qualify? Keep in mind, I had made my land a conservation land, a land that protects the neighbor, protects the Thomas Creek so that they don't have contaminants from off my land down stream. Then I was told this now, this afternoon, that I don't qualify for CRP, but if I put it in beans and corn when there's erosion, then I could re-qualify. Now you think about it. What's the responsibility of the federal government to the state of Nebraska? Isn't it time that the state Legislature asked them to toe the line on some of their policies that run contradiction to what this state says it wants to do? And is supposedly ordered by the federal government to do. Doesn't make sense to me. That's a personal experience, it just happened this afternoon. I can't believe that they wouldn't look at me and say, are you trying to conserve that property and improve the water quality in this state, well we're not the state, but we are the federal government and we're supporting the state of Nebraska and we're going to have a program that backs you up and makes things consistent. They're not doing that. [LR94]

SENATOR LOUDEN: Well thank you for testifying, Mr. Lambert. [LR94]

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GARY LAMBERT: Well, I'm not done yet. [LR94]

SENATOR LOUDEN: Well you might be done... [LR94]

GARY LAMBERT: Okay. [LR94]

SENATOR LOUDEN: Because I'm not here to... [LR94]

GARY LAMBERT: I won't irritate...I'm just simply saying... [LR94]

SENATOR LOUDEN: ...sit here and listen to opinions. I'm here to find out about the study here, so I'll give you another minute, and wind it up. [LR94]

GARY LAMBERT: Okay. I would like to say that because of the policies of the state: one, my neighbor down the street has been up for sale for two years. You have to, through disclosure, state that the land is going to be taken under eminent domain for the roadbed. His land has been up for sale for two years and he hasn't sold it. I think he's in foreclosure, because the gate was closed. I know for a fact that my title has been clouded for two years, which means nobody is going to buy my property, when the state of Nebraska has announced through HDR that it's going to be confiscated by the state for a nebulous reason that I don't understand yet. Another thing that might happen is that the state might--if they're going to confiscate land under eminent domain--Nebraska has a right of reverter. I would think that if I can't live in my house under eminent domain, no other private citizen should be able to either. Because if another person was to move into my house after it was sold under eminent domain, the question becomes: how did that happen? How can my house be qualified for another person to live in it when I can't? Questions. That's enough. I think you've heard enough by now...but understand...it's a frustrating situation out there that you...through complicated policies you guys have put us in... [LR94]

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SENATOR LOUDEN: Well, thank you for testifying, but when you talk...the Road Department, that's not what we're here to discuss today. [LR94]

GARY LAMBERT: But they took all the land for the road which Senator Christensen over here said they'd...minimal. They maximized, in my situation, and never explained it. I believe it's tied in with the NRD, to be specifically (sic). I think it's part of the idea of how they're going to get this land through public-private partnership without being man enough to come out and negotiate with the landowners if they want it. It's as simple as that. [LR94]

SENATOR LOUDEN: Thank you for your opinions, Mr. Lambert. [LR94]

GARY LAMBERT: Yes, sir. [LR94]

SENATOR LOUDEN: Next testifier. [LR94]

BARBARA WRIGHT: Could you please bring the two boxes, I had some public information brochures that I brought for everybody. I wish that... [LR94]

SENATOR LOUDEN: Just hand them out to the... [LR94]

BARBARA WRIGHT: I want to give them to everybody, can I? [LR94]

SENATOR LOUDEN: Well you can do that afterwards, right now hand them out just to the committee. [LR94]

BARBARA WRIGHT: Okay. I should have just put them at the door there. My name is Barbara Wright. And I'm speaking for myself and on behalf of the other house in the Nebraska Unicameral, that is, we the people. And we the people have not been

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informed at all about this storm water management plan. I believe that the public meeting laws have been broken. I believe that the plan is invalid. I believe that what Washington County and Douglas County worked on together should be our storm water plan. [LR94]

SENATOR LOUDEN: Can you spell your name for the clerk, please? [LR94]

BARBARA WRIGHT: Yes, it's Wright, W-r-i-g-h-t. My first name is Barbara, and I'm a victim of the Papio Creek Watershed Partnership. And I want to show you what it looks like on the ground. Where can I put this so that people can sort...shall I put it... [LR94]

SENATOR LOUDEN: You have to get to the microphone now when you talk. [LR94]

BARBARA WRIGHT: The other people won't be able to see. Okay. Here's the Elkhorn River, and here's Highway 275, Q Street, and this is my farm here. Actually there's one parcel I am missing here, it's 4 contiguous parcels, okay? Hamptons Development, by Boyer and Young, is right down here. This is the farm development, and that's their park, and this is actually Dave Lanoha's development up here. So I've got development going on all around me, okay? All right. I got on to something was wrong here in January of 2006 and stumbled onto it, much my accident. I actually was lied to by the Boyer and Young, Hill-Farrell engineer who told me that the wastewater treatment facility for the Hamptons--that was supposed to be for just 60 homes, at first, he got his foot in the door with that--was going to be not next to my land but down here some place in the trees, away from my land. And then someone told me that he lied to me so I actually just got on the internet to find out how far the discharge pipe was going to be from my farm. That's where I went to find out. I ran into way more than what would ever come out of that discharge pipe. Which by the way would have had 30,000 people's sewage into the Elkhorn River, in a location where I have been able to step across it and it's this wide. It would have been sewage from there on down. It would have been a toilet that wouldn't flush for six months. Now the people who were for this

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were all the...I have to say, the NRD. The Papio-Missouri NRD said don't do that development. They were in the newspaper saying don't do that development, because we have not yet figured out what we're going to do with the sewage. My watershed has not had one dollar of money spent on it. My watershed is covered by the storm water plant. We did not get on bit of input into this plan. It was a done deal, and quote, the partnership had decided by the time it came before the Douglas County Board, like the Auschwitz train going through the station at 200 miles an hour. And you got a crew, unanimously approved...and the public meeting laws were broken. Now I've asked for the audio tapes, in fact I had an attorney with me. By the way, my attorney's fees since January of 2006 are \$70,000, because of sustainable development, Agenda 21, and that is what we are implementing here. And its compliments of W. Cecil Steward who has commingled Omaha tax dollars, Lancaster tax dollars, Nebraska's lottery funds, federal funds, and international monetary money (sic), and World Bank funds, and Asian bank funds. And when that man was in here talking about foreign, he's absolutely right. I am a nurse. I have a bachelor of arts in nursing. And so I had no education in government or civics or anything past what I got in the Nebraska public school system. And so whatever I know about constitutional government and our constitutional republic and how it's supposed to operate, I learned from my elementary school teachers at Maywood Elementary School in Ralston, where I grew up. And then I went to the Millard High School when it was a junior high...senior high. So whatever they taught me is what I know. Going on what I learned in the Nebraska public school system, when Nebraska used to have their own public school curriculum, instead of teaching the UNESCO, United Nations' No Child Left Behind curriculum. Which teaches our children that the Constitution is outdated. Even on your Legislature's web site, there is a tutorial on there that's talking about our country being a democracy. Our country is not a democracy. I pledge allegiance to the flag of the United States of America, and to this democracy--no--and to this constitutional republic, for which it stands, big difference...opposite. A democracy is mob rule, that's a lynch mob. That's how this is all being decided. Only the lynch mob if just a little tiny stakeholder group with hand-selected stakeholders, is how these zoning and all these decisions are being

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made. We the people of the other house have been duped, and I have to tell you that you, as the state Legislature, the Governor of Nebraska, and I believe our Attorney General, and all the elected county boards and city councils have been duped. Omaha dominates this Pappas Creek Watershed Partnership. Omaha dominates the Metropolitan Area Planning Agency. [LR94]

SENATOR LOUDEN: Can we get back to your farm and what that has to do with it... [LR94]

BARBARA WRIGHT: Okay. Yes. And go back to my farm. My farm is being destroyed. My constitutional rights and my civil liberties and my civil rights are being taken away. I have not been able to do my own farming. I spent \$12,000 fertilizing this to get a second cutting and I was never able to get a second cutting. My land was, on digital maps, four feet higher than that land. That land is now six to nine feet taller than my land. That runoff from that development is being illegally diverted onto my land and my hayfield has been flooded. And this all started in mid-June. And I have done nothing. I have sent about a thousand e-mails. I've been sending out...I'm being told to go on national talk radio if I don't get some action here in Nebraska. [LR94]

SENATOR LOUDEN: Have you gotten an injunction against them for putting that water onto your property? [LR94]

BARBARA WRIGHT: No, I haven't gotten anywhere. And I'll tell you why you don't get anywhere. Because the government-sanctioned monopoly is the city of Omaha government. You go to city of Omaha, and it's ci.omaha.ne.us. By the time you get to Omaha Public Works it is not city of Omaha government any more. [LR94]

SENATOR LOUDEN: Is that Omaha Public Works or is that a development that's raised... [LR94]

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BARBARA WRIGHT: Okay. How this is now, is first there's something basically unconstitutional about this interjurisdictional area. But here when this development started, my land, all of my land, and this land were in Douglas County. There was not one inspection during the whole time it was in Douglas County to make sure that he was keeping with his NPDES permit, not one inspection. The County Board was lied to. The County Board was duped. The County Board was not given the classified public records. Right now I have somebody at my home baby-sitting my home. Because I have so much evidence in my home that I will never collect again that I started collecting in January, 2006, that I'm afraid it will be stolen from me. Because it is no longer available. When I went to the County Zoning Office they called the sheriff on me because I was in there three minutes after closing time looking through a blizzard of paper that they charged me \$74.50 for that was nothing I requested in writing. And I would say that I have a letter in my stuff here, that I would say somebody is impersonating the Attorney General Bruning. I e-mailed him about these public records request and I got something back signed, sincerely, Jon Bruning, but just typed. And then it said Deb Owens under it. And unless Jon Bruning is a different person than I think he is, he would never have ruled that way on this issue. Deb Owens is not an attorney. And so then I e-mailed back and I said, dear Attorney General Bruning, I said, would you please sign your letter of September, whatever it was, and have your signature notarized. And scan it in and e-mail it to me, and then send it back to me by certified mail so that I know this is your final answer. I didn't get that back. Now what I did get, was I got something from Attorney General Leslie Donley, and may I ask, you're the legal counsel, what is your name? [LR94]

JODY GITTINS: Jody Gittins. [LR94]

BARBARA WRIGHT: Okay. Anyway, Leslie Donley wrote me something and she did not address the issues. She's telling me that it's just fine that Kent Holm...taking it upon himself as an employee of Douglas County, that apparently they destroy the audio tapes when they do the minutes. And the County Board never knew that. The County

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Board's public hearings and everything are videotaped and they never destroy those. And Commissioner Borgeson and Chip Maxwell were not aware that those were destroyed. [LR94]

SENATOR LOUDEN: Okay. Now what is it that you want us to do now? [LR94]

BARBARA WRIGHT: Okay. Okay. Well, what we need to do, I'll tell you what I have...I need about three days, is what I need. And in fact I have some people...I was at the Freedom 21 Conference in Dallas when my land was incorporated into the Hamptons subdivision. When I left it was my farm. When I came home it was not longer my farm. When I came home it was an out lot for the Hamptons subdivision and I owned the only mobile home in the Hamptons subdivision. Now it's still titled to me, but the monopoly has so much power, they are breaking local, state, and federal laws. And this is a bad enough mess that we need Attorney General Jon Bruning to get involved with this. [LR94]

SENATOR LOUDEN: How many acres are you talking about there that you own? [LR94]

BARBARA WRIGHT: I own 272 acres and this parcel that this is being done on...is this kind of a triangle parcel here. What's being done to the land here is...I've got pictures that prove that Omaha Public Work's Lindsey O'neil's (phonetic) inspections are false. I've got photographs with dates on the back where I was going to Wal-Mart as fast as I could to get them developed. And I've got evidence...I've got evidence, that's why I've got somebody guarding my house. Because I don't want my evidence stolen. I can lay her inspection reports and I can lay my pictures side by side and her inspection are absolutely false. It's Bob Doyle is the attorney and Elliott and Associates is the engineering firm. And Elliott and Associates, of course, is in the Papio Creek Watershed Partnership. Tim Young very wisely went away from Hill-Farrell and got into the Elliott and Associates attorney farm, because they're in the monopoly. So basically what we've

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got is we've got Bob Doyle and John Fullenkamp crafting and drafting our laws to profit themselves and their clients, and then violating them with impunity. And I'll tell you, if I were a developer I'd probably pay \$10,000 an hour to Bob Doyle if I could violate the local laws with impunity, violate the state laws, violate the federal laws, and not have to give any of the true information to the NDEQ. [LR94]

SENATOR LOUDEN: Who has jurisdiction over that? Is that the County Supervisors or... [LR94]

BARBARA WRIGHT: Now it's in Omaha. Now it's in Omaha. So here's the way the public records went. What we have is classified public records. What we have is the Douglas County Board sitting up there wasting their time, being treated like doofuses, being treated disrespectfully, not given the real information. They were told, the public was told in front of the Planning Commission that there was going to be no grading except for the roads on this development. Gerry Bowen of the NRD was told: no grading except for the roads. Now when I went to Martin Cleveland, Gerry Bowen wasn't there. I went to the NRD and talked to Martin Cleveland. He gave me a copy of what Gerry had been given for a grading plan. And it showed all the old "topo-lines" and no grading but the roads. Now here's where I fault the NRD. When Martin Cleveland and Gerry Bowen knew from me that something else was different, and I'm bringing in grading plans where there were no permits, they should have stepped up to the plate and said, hold just a minute. County Board, we put our thumbs up on this Hamptons subdivision and we were given this information which has turned to be apparently false. And we no longer put our okay on this, if we're just being sold a line of baloney. And then we put Papio-Missouri NRD gives it the thumbs-up, now they're not a regulator, but they give it a thumbs-up. [LR94]

SENATOR LOUDEN: Okay. What's the description of your land? That's 222nd (sic) Street? [LR94]

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BARBARA WRIGHT: This is...I can tell you the parcel number of that is 040900001, I think. This here. And my address is 22655 Homestead Road. Okay, so I'd like you to go out there and see that land. You know how you can get there easily, a whole bus of you? You can go on Q Street. [LR94]

SENATOR LOUDEN: Well, I don't need to go look at it. I just wondered where it is because... [LR94]

BARBARA WRIGHT: Well, I'll tell you, you need to go look at it... [LR94]

SENATOR LOUDEN: ...so far with your testimony there's not much I think we can go on other than we can probably turn this over to somebody if you haven't already, so... [LR94]

BARBARA WRIGHT: Well, Commissioner Chip Maxwell is trying to help me, but here's the deal. You all...do you have those things, the box of things that I wanted to give them to... [LR94]

SENATOR LOUDEN: Now wait. We got...is there one more testifier? Yes, you're going to have to quit here in a... [LR94]

BARBARA WRIGHT: Okay. Well, when am I going to get a forum? Because if I don't get a forum here, I'm going to ask to go on national talk radio and it's going to be two black eyes for Nebraska. [LR94]

SENATOR LOUDEN: We don't have any forms. We don't give out forms. We just listen. [LR94]

BARBARA WRIGHT: No, forums. [LR94]

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SENATOR LOUDEN: Well, you're getting your forum. You explained it to us and that.
[LR94]

BARBARA WRIGHT: Okay. Well, I haven't nearly gotten my forum because what is...for instance, my land is the only land in the state of Nebraska where my will has been trumped by the zoning. My mobile home can't be repaired. [LR94]

SENATOR LOUDEN: We...we're taking testimony on what we want to do about whether or not... [LR94]

BARBARA WRIGHT: Okay. [LR94]

SENATOR LOUDEN: ...you want to do your bonding issue or something like that.
[LR94]

BARBARA WRIGHT: Okay. [LR94]

SENATOR LOUDEN: This is getting a little bit farfetched. That's the reason I'm willing to go a little bit farther with you... [LR94]

BARBARA WRIGHT: Well, this is how the... [LR94]

SENATOR LOUDEN: ...and find out where your land is and... [LR94]

BARBARA WRIGHT: ...storm water plan looks on the ground. [LR94]

SENATOR LOUDEN: ...and who is responsible for it. [LR94]

BARBARA WRIGHT: There are no... [LR94]

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SENATOR LOUDEN: Now if that isn't a good enough forum for you, you'll have to find somebody else... [LR94]

BARBARA WRIGHT: Okay. [LR94]

SENATOR LOUDEN: ...because that's all we're going to do. If you will give me your description of your land, where it's located and stuff, I'll turn that over to some other people and see what we can do, as Chairman of the Natural Resources Committee. [LR94]

BARBARA WRIGHT: Okay. [LR94]

SENATOR LOUDEN: That's the best I can do. [LR94]

BARBARA WRIGHT: Okay. Well, here's one of the problems. Commissioner Chip Maxwell and Commissioner Mary Ann Borgeson are trying to help me. But what do you do with the fact that this is in now Omaha's jurisdiction and Dean Miller (phonetic) talked to me for Omaha City Council. And of course, I don't have an Omaha City Council member. Somehow or other in our State Legislature we have it fixed so everybody around every city in Nebraska in the three-mile limit in the interjurisdictional area is under that city's jurisdiction and they have, for their elected representative, a county board member. So that's kind of like living in Nebraska under Nebraska state laws and having an Iowa senator who has no authority. So I don't know how far Commissioner Chip Maxwell will get. But that's unconstitutional. The interlocal law that allows the formation of the Papillion Creek Watershed Partnership, I have an attorney's opinion that that's unconstitutional. The other law that formed the I-80 zone commission is unconstitutional. And so... [LR94]

SENATOR LOUDEN: Well, we're not discussing that today. So finish up with whatever...do you want to give me that kind of information, you want me to do

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something about it? [LR94]

BARBARA WRIGHT: You can do something about it. And then what I also want to say is HDR is in partnership with W. Cecil Steward. [LR94]

SENATOR LOUDEN: I'm not going to worry about who's in partnership. I wanted to know whether or not... [LR94]

BARBARA WRIGHT: He was here though, and... [LR94]

SENATOR LOUDEN: I will do something, whether I will turn this over to another (inaudible). [LR94]

BARBARA WRIGHT: Okay. But when I asked what the storm water laws were for my land, I was referred to HDR, who I don't think was any part of the storm water planning. [LR94]

SENATOR LOUDEN: Well, that I don't know, who said what or what. Turn me over the information, you're done testifying. That's how I have to make it work. I can't sit here all evening and discuss the whole idea. [LR94]

BARBARA WRIGHT: Well, I tell you what. If something doesn't give, it's going to cost me my life. These sores on my body have been here since January 2006. I have a \$14,000 bill at Mayo Clinic and a spot on my right lung. I quit smoking, I'm supposed to be back for two CT scans. Instead I'm smoking three packs a day, pacing, pacing, because I'm powerless. [LR94]

SENATOR LOUDEN: Well, I'm sorry. But like I tell you, if you will give me the information, I will turn this over to people that I think may be able to give us the answers. [LR94]

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BARBARA WRIGHT: Oh, and one more thing. Senator Fischer and Senator "Cap" Dierks were out in Valentine when Stewards of the Range, Fred Kelly Grant came out to help the county boards, county commissions in Valentine. Fred Kelly Grant looked at the zoning on my land when he was out there and he said, send me that, I'd like to attack it. But since this has all come to the fore now, Fred Kelly Grant tells me this is way too complicated for him to be my attorney. He was going to do that. But I'll tell you what he has offered to do. He has offered to help Attorney General Bruning do what's called a coordination, and that's the main thing I need to tell you. [LR94]

SENATOR LOUDEN: Okay, that... [LR94]

BARBARA WRIGHT: This is on storm water plan. This is...remember when somebody said that the federal government makes the mandate but they don't give you any money for it and they kind of stick us with this... [LR94]

SENATOR LOUDEN: No, no. You're done, you're done. Next testifier? [LR94]

LINDA RYAN: (Exhibit 13) Senators, my name is Linda Ryan and I really didn't expect to be speaking today. I would like to be able to enter into the record for Dr. Marian Maas who just left. She was feeling ill and she's been waiting patiently and she had a prepared statement I really would like to read to you. Can I do that? [LR94]

SENATOR LOUDEN: Would you give your name, spell your name? [LR94]

LINDA RYAN: My name is Linda Ryan. I'm a resident of Omaha, Nebraska. My name is spelled L-i-n-d-a R-y-a-n. [LR94]

SENATOR LOUDEN: Thank you. [LR94]

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LINDA RYAN: Anyway, this is what Dr. Marian Maas has written and she will explain...I'm reading it for the first time, but she will explain who she is and her thoughts on this. Okay. I am not a landowner in Washington or Douglas Counties. I have a master's and a doctorate in biology from the University of Nebraska. I have previous work experience with the city of Omaha's Public Works Department and with Iowa's Department of Natural Resources in the water quality bureau where I was supervisor of the program responsible for water quality and for TMDLs across the state of Iowa. I am currently the project manager for an EPA grant that is focused on improving water quality in the Papillion Creek. As a professional biologist, I wish to increase your understanding of the severe impact that dams have on streams and rivers and that low impact development and EPA-proposed green infrastructure techniques, instead of dams, not only provide water quality improvements to our streams but also reduce the amount of storm water runoff volume. Mr. Ben Grumbles, EPA assistant administrator for water, testified to the U.S. Senate Committee on Environment and Public Works recently that EPA has joined in a partnership with other organizations in April 2007 to promote the use of "green infrastructure" to lessen sewer overflows and runoff after storms and that a primary goal of this new partnership is to reduce storm water runoff volumes. Green infrastructure, including low impact development and other terminologies, is a storm water management approach that is cost-effective, sustainable, and environmentally friendly. Green infrastructure techniques utilize natural systems or engineered systems that mimic natural landscapes to capture, cleanse, and reduce storm water runoff using plants, soils, and microbes. Regionally, these can consist of interconnected open spaces and forested areas, flood plains, and wetlands. Locally, it consists of site-specific management practices such as rain gardens, rain barrels and cisterns, porous pavements, and bioretention cells along large parking lots and streets. These all contribute to maintaining the natural hydrologic function by absorbing and infiltrating precipitation where it falls. These methods should be given equal attention to this study. However, I am concerned that the study is limiting its investigation mainly to the use of water retention basins--actually dams, but the word "dam" is avoided--to reduce storm water runoff and the perceived flooding problems. In

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my opinion, the information provided by the partnership is from a biased point of view. From my experience in studies and scientific research, any study is intended for discovery. A study is to learn of all possible contributing factors to the particular question at hand. It is to better understand a process, condition, structure, or event by investigating all possible approaches and the positives and negatives. When determining the best course of action, a study or investigation cannot limit input to only one particular line of thinking or body of information. It would not be considered by your peers to be a credible study or investigation. Now in regard to dams, dams are artificial barriers that obstruct flow and destroy streams. Dams built today to create flood control or recreation ponds ruin hundreds of thousands of miles of free-flowing streams. They fundamentally alter a riverine ecosystem and its natural functions. And unfortunately, these are seldom considered at the time of construction. Specifically, I would like to explain these impacts. This is habitat and wildlife and fish communities. Okay, number one, dams break up the continuity of a river system. This means that native fish populations, mammals, birds, and other animals that rely on moving up and down the stream no longer can. Fish populations become fragmented and genetic diversities weaken, leading to eventual die-off. Habitat fragmentation--this happens when a larger area is subdivided into smaller isolated patches. Number two, as our landscape has changed to intensive agriculture and urban development, just about the only habitat remaining for many of our mammals, birds, and amphibians is the stream corridor, which will be lost if dams, reservoirs, and accompanying housing developments are built without sound forethought and restraint. Fragmentation of habitat is considered the leading cause of reduction of wildlife. Number three, preventing the free passage of fish and other aquatic animals affects the biological quality of any stream, but it is even more severe to streams which are already under stress from pollutants and degradation. Dams keep mature fish from reaching spawning and feeding sites. Number four, it is important for fish and other aquatic animals to be able to escape from polluted areas in the lower reaches and find refuge and better habitat upstream. If a catastrophic even occurs, such as a chemical spill or toxic leak in the urban lower reaches, fish can't escape if a dam is upstream. Nearly all of the best habitat sites are found on the upper

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reaches. Number five, dams do nothing to control pollutants from entering the stream in the stream reaches below the dam. In the Papillion Creek Watershed, this includes all of Omaha. Thus, all of the pollutants from city streets and parking lots, lawns, vehicles, illicit discharges, and so forth will still be entering the streams. Number six, dam density in a watershed; when multiple tributaries in a stream system have dams placed on them, the damage to the stream system is compounded. This is referred to as high dam density and is a major criteria item in states that are removing dams. Okay, I think this is seven. As history has shown, water level in reservoirs will always take precedence over the flow in the stream below. Thus, if it is a dry year and reservoir levels are low, very little water will be released, leaving fish stranded in a stream bed or very low or only intermittent flow, low dilution capacity, and likely to suffer winter kill. Okay, one last comment regarding the often-stated phrase that water quantity and water quality are connected, almost stating that the two are connected and giving the impression that when one is remedied, the other one automatically is corrected as well. Well, this is not true. It is a generalizing statement. Dams may stop rain water from flowing down the Papillion Creek, but storm water outfalls below the dams will continue to carry storm water runoff from all the streets, neighborhoods, and parking lots below the dam. This comprises much or all of Omaha. And in this storm water that is entering the streams from Omaha, it carries with it many pollutants that will continue to enter the stream regardless of how many dams have been built upstream. Water quality will continue to be impacted and the streams impaired, unless low impact development and green infrastructure practices are put into place. I wish to request that the Natural Resources Committee and the Urban Affairs Committee investigate information from all approaches. And that's Dr. Marian Maas, Ph.D. That's spelled M-a-r-i-a-n M-a-a-s. You can have questions but I'll have to depend on some others to answer. [LR94]

SENATOR LOUDEN: Senator Hudkins. [LR94]

SENATOR HUDKINS: Ms. Ryan, what credentials does Dr. Maas have? Is she a biologist, what? [LR94]

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LINDA RYAN: Yes, a master's and a doctorate in biology from the University of Nebraska. And I believe she's a limnologist? [LR94]

_____: She's a limnologist, which is the study of water and she's doing the EPA-funded... [LR94]

SENATOR LOUDEN: If he explains, he'll have to come to the microphone or else you'll have to explain it. [LR94]

LINDA RYAN: Well, he can probably do more, I'm the reader. [LR94]

SENATOR HUDKINS: So she is an expert in biology and also in water? Okay, thank you. [LR94]

SENATOR LOUDEN: Okay, thank you for your testimony. Okay, this... [LR94]

SENATOR FISCHER: Senator Louden, could you possibly ask for a copy of that testimony? If we could have a copy and then make copies for the committee members, would that be all right? [LR94]

LINDA RYAN: Certainly. [LR94]

SENATOR FISCHER: Thank you. [LR94]

SENATOR LOUDEN: Go ahead, sir. [LR94]

WAYNE DREESSEN: My name is Wayne Dreesen, W-a-y-n-e D-r-e-e-s-s-e-n. And we farm in Washington and Douglas County. And the big dam that they want to put in will be right on our land. We've got 400 acres there right along the Papio. And I think the

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NRD is trying to push all this stuff just to push everybody out. And first off, I want to say that I'm against bonding authority 100 percent. They have used money so recklessly over this whole thing. When you're putting \$1 million for an over-the-river bridge, if that's a natural resource thing, then I must be dreaming. There is no way that this can take place anymore. So anybody that votes for this, it's not a good thing. Thank you. [LR94]

SENATOR LOUDEN: Okay. Any questions? Oh, did you sign a sheet? [LR94]

WAYNE DREESSEN: Yes, I did. I put it in the... [LR94]

SENATOR LOUDEN: Okay, good enough. Thank you for your testimony. Well, if there are none others, then this...okay, did you sign a sheet? [LR94]

TIM DREESSEN: I'm going to do one right now. Or can I do it when I'm done, is that okay? Okay. My name is Tim Dreessen, T-i-m D-r-e-e-s-s-e-n. Senators and Chairperson, thank you very much for letting me speak about the dams. And me and my father farm up in Washington County. And I mean, we are definitely against this bonding authority. We've been down here fighting to save our ground, hoping to pass it on to my son next generation. If we're about flood control here, I don't know what you guys went on your tour today or where you went, but Newport Landing out by Bennington, Dam Site 6, if that's flood control then I would like to know why they keep pumping water into it. If it's flood control, you shouldn't keep filling it. That kind of bothers me that we're paying for that kind of stuff. Also, the studies that they had completed, HDR, which says right here in this pamphlet that we receive from the NRD, it says controlling floods, special report, Papio Dam Sites 1 and 3C reservoirs study completed. My dad was just in contact the other day with a gentleman and he will be in contact with us tomorrow, and I believe it's tomorrow or this weekend, one or the other. Because we have cultural resource sites on our farm ground that we have right along the Papio Creek. We have never, ever been told once what those are. We've asked and we've never been told anything. This gentleman calls us the other day and tells us he's going to come out and

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let us know what these are or what's going on or what's happening. My father specifically asked Dick Gordon from HDR, I believe he is, if this study was completed at the last meeting in Bennington High School. He was specifically told it was completed and it's all over with. That's when my dad proceeding to ask him, then how come you never told me about my cultural resource sites, which I asked about at the last two meetings. And then he stepped back and said, oh, well we'll get that to you. The study is completed. Obviously you can't get it to us now. (Laugh) So now we have somebody coming to us, going to tell us this about the resource sites or what. We have no idea what they're going to tell us. We can't find out. We don't have the power to find out what them actually are, if there's Indian stuff there, we have no idea. You know, obviously it's a pretty big deal, I would think. It's on a historical map somewhere so it must be history of some kind. Really bothers me about that stuff. More flood control, as you read in this pamphlet which you can get right out in the hallway, Dam Site 13, which is right east of Elkhorn High School, says it's already filled. It's up to capacity. It's full. What good of flood control is that going to do if it's full too now? I mean, this is something we look for in the future. If this is something they want to do is keep putting these dams in and they're to capacity, we get two inches of rain, we have water running everywhere, I would suppose. If we're at capacity, two inches of rain would be a considerable amount of rain that's going to be coming over the top of these dams. I just think it's something you guys really need to think about. And again, I don't want to take too much more of your time. We've been here a long time. So think about that stuff with the flood control, the pumping of water into a flood structure. I just, it doesn't make sense to me. I think they're blowing a lot of smoke, is what I think. [LR94]

SENATOR LOUDEN: Okay. Questions for Tim? Seeing none, thank you. [LR94]

TIM DREESSEN: Thank you. [LR94]

SENATOR LOUDEN: Okay, you'll be the last one because I don't want people to think of something and get up and come back up and say it again. (Laughter) [LR94]

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SHELIA DREESSEN: Thank you. Well, you heard from my husband and my son. My name is Shelia Dreessen, but my name is spelled S-h-e-l-i-a, it's different than anybody else, D-r-e-e-s-s-e-n. I wanted my husband to ask this or tell you this, but he forgot. In the studies that they did 30 years ago with the Corps of Engineers, our land right along the Papiro Creek is called Kennebec soil. I don't know if you know what that is, but that is the richest soil in the world. Newport Landing, the dam site by Bennington, was also Kennebec soil. They have, the NRD--I do believe, I'm not 100 percent sure--has a boat that has to go around that dam quite a bit that has cutting scissor-like things underneath it that cuts the vegetation along the edge because that land is so rich and so good, they have to do that. Now if they put 3C in, they'll have to do that from Highway 36 to Highway 30, because they're going to have the same thing, the Kennebec soil is there. In all the years that we've lived up there and farmed that land and it's been pretty dry, we have never had under 125 to 140 bushel corn and never less than 30 bushel beans in all these dry years, because that soil is so rich and so good. And it just seems so sad to put that type of good soil underwater so somebody can put a boat in it. I mean, I know it's supposed to be for dam, for flooding and stuff, but let's face it. That \$500 fee that the realtors will pay, they'll just tack it on to the person that buys the lot and builds the house. [LR94]

SENATOR LOUDEN: Okay. Questions? I guess not. Okay, this so ends the testimony on LR94. [LR94]

_____: You didn't ask Senator Kopplin if he'd like to close. (Laughter) [LR94]

SENATOR LOUDEN: And is there anything you would like to close? [LR94]

SENATOR KOPPLIN: No. (Laughter) [LR94]

SENATOR LOUDEN: Thank you all for coming here today. Thank you for your

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testimony. And I especially thank the senators for their indulgence this afternoon. [LR94]